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Arb.O.P.(Comm.Div.)No.170 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.170 of 2023

M/s.Shriram Finance Limited
(formerly M/s.Shriram City Union Finance Limited)
having its branch office at:
No.145, Santhome High Road, Mylapore,
Chennai, rep. by its Authorised Signatory,
Mrs.S.Aarthi

...Petitioner

Versus

1.Mr.Ram Kumar (aka) Ramacoumar
2.Mrs.Sathiapriya

...Respondents

Original Petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996 for the following reliefs:

(i) To substitute the arbitrator appointed by the petitioner by appointing any fit and competent person as an Arbitrator so as to adjudicate the claim and the dispute between the petitioner and the respondents under the Loan Agreement dated 28.09.2017 and

(ii) To direct the respondents to pay the cost of the petition.

For Petitioner : Mr.R.Uma Shankar

For Respondents : No Appearance



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Arb.O.P.(Comm.Div.)No.170 of 20__

ORDER

The present petition has been filed under Section 15(2) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator to adjudicate the dispute arisen between the petitioner and the respondents in relation to the Loan Agreement dated 28.09.2017.

2. The learned counsel for the petitioner submitted that the first respondent approached the petitioner for financial assistance of Rs.50,00,000/-, pursuant to which, the first respondent as a borrower entered into a Loan Agreement dated 28.09.2017 vide Loan Agreement No.PONC2TF1709280015 with the petitioner and availed a sum of Rs.50,00,000/- as loan from the petitioner. The second respondent stood as guarantor to the said loan. Under the said Loan Agreement, the first respondent agreed to repay the loan amount together with interest of Rs.41,35,000/- in 60 monthly installments commencing from 10.11.2017 to 10.10.2022. In case of default in payment of the installments, interest or



other charges payable under the said Loan Agreement, the 1st respondent agreed and undertook to pay overdue interest at contractual rates computed at monthly rates on such unpaid amounts from the date of default to the date of payment. As security to the said loan, the first respondent mortgaged his property situated at Pondicherry in favour of the petitioner by way of Deed of Simple Mortgage dated 27.09.2017 which was registered as Document No.13206 of 2017 on the file of Sub Registrar Office, Oulgaret.

2.1. After obtaining the loan, the first respondent has paid only 12 installments and thereafter, committed default in making payment of installments which is contrary to the terms and conditions of the aforesaid Loan Agreement. Hence, the petitioner vide Notice dated 13.08.2019, called upon the respondents to settle the outstanding loan amount and also, in the said notice, it has been stated that if the respondents fail to settle the outstanding loan amount, the petitioner will refer the claim to Mr.C.A.Ravichandran, Advocate who was nominated as an Arbitrator by the petitioner, for adjudicating the dispute between the parties. After the receipt of said notice, the respondents vide Reply dated 23.09.2019, raised their objections regarding the nomination of Arbitrator by the applicant. In



the meantime, the said Arbitrator vide Letter dated 02.12.2019, recused himself from the arbitral proceedings.

2.2. Thereafter, the petitioner issued a Notice dated 12.12.2019 to the respondents, calling upon them to clear the outstanding amount. Further, in the said notice, it has been clearly stated by the petitioner that if the respondents fail to settle the outstanding amount, the aforesaid Loan Agreement will be terminated and legal proceedings will be initiated against the respondents. Even after the receipt of said notice, the respondents did not come forward to pay the outstanding loan amount.

2.3. The learned counsel further submitted that as per Clause No.18 of the Loan Agreement dated 28.09.2017, if any dispute arises between the parties under the said agreement, the same shall be resolved by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause No.18 of the Loan Agreement dated 28.09.2017 is extracted hereunder:

“Clause 18

(a) Without prejudice to the lender's right available to it under the SARFAESI Act, 2002, all disputes, differences and/or claims arising out of this agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the Provisions of the Arbitration and Conciliation Act, 1996, or any other statutory



WEB COPY



Arb.O.P.(Comm.Div.)No.170 of 20__

modification or re-enactments for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender. The applicable laws shall be Indian Laws. In the event or incapacity or resignation or death of the sole arbitrator so appointed, the lender shall be entitled to appoint another arbitrator in place of the earlier arbitrator and the proceeding shall continue from the stage at which the predecessor had left.

(b) The award given by the arbitrator shall be final and binding on the parties to this agreement. The cost of the arbitration shall be borne with by the parties in accordance with the award passed by the arbitrator.

(c) The venue of arbitration shall be as specified in Schedule – 1 hereto and the proceedings shall be conducted in English language.

(d) The Borrower and Guarantor hereby agree and confirm that the Lender shall be permitted to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and any amendments thereto in order to recover its dues under this Agreement from the Borrower/Guarantor.”

Hence, the petitioner vide Letter dated 18.02.2020 nominated Mr.K.S.Gowthaman, Advocate as an Arbitrator for adjudicating and resolving the dispute between the parties. Accepting the nomination of petitioner, the learned Arbitrator issued notice to the petitioner and the respondents. After receiving the notice issued by the learned Sole Arbitrator, the respondents vide Letter dated 26.09.2020, raised their objections for appointment of Arbitrator and constitution of Arbitral Tribunal. In view of the objections raised by the respondents, the learned Arbitrator vide Letter dated 03.11.2020, recused himself from the arbitral proceedings. Aggrieved over the same, the petitioner has filed the present



petition for the aforesaid relief. Therefore, the learned counsel prayed this Court to appoint an Arbitrator, to adjudicate the dispute between the parties.

3. Despite the service of notice and name of the respondents are being printed in today's cause list, none appeared on behalf of the respondents.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute between the parties is arising out of the Loan Agreement and the same is arbitrable as per Clause No.18 of the Loan Agreement dated 28.09.2017. Hence, this Court is inclined to pass the following order:

(i) Mr.P.Giridharan, Advocate, Chamber: “Vanguard House” 3rd Floor, No.48, Second Line Beach, Parrys, Chennai – 600 001, Mobile No.9884672733 is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.



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(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondents before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondents.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

15.06.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



WEB COPY



Arb.O.P.(Comm.Div.)No.170 of 2023

KRISHNAN RAMASAMY, J.

mrr

Arb.O.P.(Comm.Div.)No.170 of 2023

15.06.2023