



Arb.O.P.(Com.Div.)No.362 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.362 of 2023

Tata Capital Financial Services Limited,
Represented by its Authorized Representative,
Registered office at,
11th Floor, Tower A, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower parel,
Mumbai – 400 013.
Branch office at,
1st Floor, Centennial Square,
6A, Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.
Power of Attorney Mr.Noyal James J.

... Petitioner

Vs.

1.Go Green Motors India Private Limited,
Plot No.-20, 21, Kodapur Road,
Gachibowli “X” Roads,
Hyderabad – 500 032.

2.P.Sanjay Anand

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate the disputes arise between the Petitioner and the Respondent.



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Arb.O.P(Com.Div.)No.362 of 2023

For Petitioner : M/s.Abitha Banu

For Respondents : Left

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate upon the dispute arisen between the Petitioner and the Respondents.

2. The respondents have availed a loan from the petitioner and therefore appears to be defaulted by the respondents. The petitioner has also recalled the agreements on various dates and it appears that the respondents are in arrears of Rs.1,40,41,918.62. Notice that was earlier ordered by this Court on the respondents have remains “unserved” and therefore liberty was given to the petitioner to effect paper publication.

3. In this case, paper publications were ordered. Notice was also effected through paper publication. Despite paper publication, the respondents have not come forward to appear either in person or through Court. Thus, there is a deemed service of notice on the respondent.

4. Considering the fact that the respondents have failed to respond either



to the notice under Section 21 or to the notice ordered, it has to be construed that the respondents have forfeited their rights.

5. Dispute between the petitioner and the respondent is arbitrable in terms of Clause 12 of the Loan cum Guarantee Agreement dated 29.07.2022 read with Clause 23 of the Master Terms and Conditions dated 31.12.2018.

6. Clause 12 of the Loan cum Guarantee Agreement dated 29.07.2022 reads as under:-

“12.Arbitration

If any dispute, difference or claim arises between any of the Obligor and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No.17 of Annexure 1 hereto of the Agreement. The party invoking the arbitration (“Claimant”) shall address a notice to the other party (“Respondent”) suggesting the name of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience. The respondent shall either:

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ('Notice Period'); or



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(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said notice period.

However, if the claimant does not received any response from the respondent within the said notice period, the claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the parties.

In the event, the respondent conveys its objections as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The Arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The Arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the obligor/s.”

7. Therefore, the Court is inclined to pass the following order:-

(i) **Hon'ble Mr.Justice P.Kalaiyarasan, Retired Judge of this Court, (Mobile No.:9942421667) residing at Plot No.64, 3rd cross street, CBI Colony, Kandanchavadi, Chennai – 96,** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably



within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

8. The parties are at liberty to fix the venue for Arbitration at Chennai.

9. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.



Arb.O.P(Com.Div.)No.362 of 2023

10. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

21.12.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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Arb.O.P.(Com.Div.)No.362 of 2023

C.SARAVANAN, J.

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Arb.O.P.(Com.Div.).No.362 of 2023

21.12.2023