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Arb.O.P(Com.Div.)No.317 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.317 of 2023

M/s.Tata Capital Financial Services Limited,
Represented by its Authorised Signatory/Power of Attorney
S.Ram Kumar,
Registered Office at
Tower A, 11th Floor, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400013
having one of the Branch Office at
Centennial Square, 1st Floor,
No.6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai – 600 024.

... Petitioner

Vs.

1.Venagro

2.Akula Venu

3.Akula Prathima

... Respondents

Prayer: Original Petition is filed under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996, praying to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the agreement dated 26.08.2019 in respect of contract bearing No.TCFBL0453000010575016.



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For Petitioner : Ms.Narmadha
For Respondents : Mr.M.Adeeb Mohammed

ORDER

The petitioner has filed this petition under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator to adjudicate upon the differences and disputes between the parties under the Loan Agreement dated 26.08.2019 in respect of contract bearing No.TCFBL0453000010575016.

2. The dispute between the petitioner and the respondents is governed by the Agreement for Business Loan.

3. Relevant clauses reads as under:-

"9. Arbitration

If any dispute, difference or claim arises between any of the Obligors 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 the Facility Documents 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 to be held in [Mumbai/Delhi/Kolkata/Chennai] as may be decided by the Lender in accordance with the Arbitration and Conciliation Act,



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1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.

10. Jurisdiction

Subject to Clause 9 above, the Parties hereto agree that all disputes arising out of and/or in relation to this Agreement, shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No.13 of Annexure 1 hereto. The Lender may, however, in its absolute discretion commence any legal action or proceedings arising out of this Agreement in any other court, tribunal or other appropriate forum and the Obligors hereby consent to that jurisdiction."

4. As far as the jurisdiction is concerned, clause 10 specifies that the parties agree that the dispute arising out of and/or in relation to this Agreement, shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No.13 of Annexure 1. Serial No.13 of Annexure 1 appended to the Agreement for Business Loan is different from the one that is contemplated in Clause 10. Clause 14 deals with the jurisdiction. However, it has been left blank.

5. It is noticed that the Loan Agreement was signed between the petitioner and the respondents in the State of Telangana at Hyderabad.



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6. The Arbitration Clause contains/stipulates that the seat of arbitration can be at Mumbai, Delhi, Kolkata and Chennai. There is no territorial nexus. It is outside the territorial jurisdiction of the Court within whose jurisdiction ordinarily the case could have been filed by the petitioner against the respondents. Therefore, the prayer for appointing an arbitrator within the jurisdiction therefore cannot be countenanced.

7. Therefore, this Original Petition is dismissed leaving the parties to bear their own costs. Liberty to the petitioner to file appropriate application before the learned Arbitrator.

01.11.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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