



Arb.OP.(comdiv) No.314 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.314 of 2023

M/s.Tata Capital Financial Services Limited,
Registered Office at
Tower A, 11th Floor, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

.. Petitioner

-VS-

1.Mr.Narayanan Sathyamoorthy
2.Mrs.Harini V.B.

.. Respondents

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents under the agreement dated 18.12.2019 in respect of contract bearing No.TCFBL0478000010744857.

For Petitioner : Mr.M.Arunachalam

For Respondents : No Appearance



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ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. The petitioner is a non-banking financial institution and the respondents have availed a loan under the loan agreement dated 18.12.2019. There seems to be a dispute between the petitioner and the respondents arising out of the loan agreement dated 18.12.2019. There is an arbitration clause available in the loan agreement dated 18.12.2019, which is extracted hereunder:-

“19. Dispute Resolution, Governing Law and Jurisdiction:

19.1. If any dispute, difference or claim arises between the obligors and the lender in connection with the facility or the security 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, 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.

19.2. The facility documents shall be governed by the laws of India.

19.3. The borrower agrees that subject to the provisions of Clause 19.1 above, the courts of Mumbai or the courts at the venue of arbitration decided by the Lender in accordance with Clause 19.1 above alone shall have the exclusive jurisdiction to entertain and try all matters arising from and out of the facility documents.”

3. Earlier, in accordance with the arbitration clause, the petitioner had appointed a sole arbitrator. However, based on the objections raised by the respondents with regard to the unilateral appointment of the arbitrator by the petitioner, the sole arbitrator appointed by the petitioner recused himself



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from the arbitration as seen from his proceedings dated 22.12.2022. Since the arbitration clause enables the petitioner to appoint an arbitrator unilaterally, which is not legally permissible, the petitioner has now filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

4. The petitioner had invoked the arbitration in accordance with the arbitration clause found in the agreement dated 18.12.2019 by sending a notice to the respondents on 17.11.2022. The respondents have neither sent a reply nor have they suggested any name for appointment of an arbitrator. Since there is a valid arbitral agreement between the parties and that there has been no consensus between the parties for appointment of an arbitrator, this Court will have to necessarily appoint an arbitrator. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Mr.Naveen Kumar Murthy, Advocate, having Office at S2, 2nd Floor, Singapore Plaza No.164, New No.337, Linghi Chetty Street, Chennai-600 001 (Mobile No.9884740424) as the sole



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arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the loan agreement dated 18.12.2019.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the Arbitrator.

08.08.2023

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ABDUL QUDDHOSE, J.

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