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ARB.O.P.(Com.Div) No.254 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.254 of 2023

M/s.New Link Overseas Finance Limited,
Rep. by its Director,
through by Authorised signatory
Mr.P. Viswanathan,
Mamatha Complex, Second Floor,
No.25, Whites Road, Royapettah,
Chennai – 600 014.

... Petitioner

Vs.

1.Mr.R. Anantharaman
2.Mr.A. Devanathan
3.Mrs.Umaanathan
4.Mr.T.N. Krishna Kumar

... Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Arbitration Agreement 06.06.2015; 05.08.2016 and 07.01.2017 and to direct the respondents to pay costs.

For petitioner : Mr.D. Sagunthala

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, seeking for appointment of an Arbitrator.

2. The petitioner is a Non-banking Finance Company, which has lent money to the respondents under 3 term loan contracts. The details of which are as follows:-

<i>S.No.</i>	<i>Term Loan A/c No.</i>	<i>Dated</i>
1.	TL/K15-K16/021	05.08.2016
2.	TL/K16-K17/035	05.08.2016
3.	TL/K16-K17/056	07.01.2017

3. According to the petitioner, the respondents have not repaid the loan in accordance with the respective contracts. Each of the respondents are either the borrower or the guarantor. According to the petitioner, under the respective loan contracts, certain sums of money are due and payable by the respondents. The petitioner has also raised demands from the respondents, calling upon them to pay the outstanding amount due to the petitioner. Since the respondents have not paid the dues, the petitioner had also invoked the arbitration as per the Arbitration Agreement separately entered into with the



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respondents. The Arbitration Agreements entered into between the parties are as follows:-

S.No.	Agreement	Dated
1.	Arbitration Agreement executed by 1 st & 2 nd respondents	06.06.2015
2.	Arbitration Agreement executed by 2 nd & 3 rd respondents	06.06.2015
3.	Arbitration Agreement executed by 1 st & 2 nd respondents	05.08.2016
4.	Arbitration Agreement executed by 1 st & 3 rd respondents	05.08.2016
5.	Arbitration Agreement executed by 1 st & 3 rd respondents	07.01.2017
6.	Arbitration Agreement executed by 1 st & 4 th respondents	07.01.2017

4. The petitioner had issued a Lawyer's notice on 08.03.2023 to the respondents, invoking arbitration as per the Arbitration Agreement. A reply has also been sent by the first respondent on 27.04.2023 through his counsel, admitting his default but disputing the quantum. Despite receipt of the notice dated 08.03.2023 by which the petitioner had invoked arbitration, the respondents have not suggested any name for being appointed as an Arbitrator. Since there was no consensus between the parties, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.



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5. The Arbitration Agreements referred to *supra*, have been filed as documents along with the typed set of papers by the petitioner. The respondents have also been duly served in this petition. Excepting for the first respondent who has entered appearance through a counsel, the other respondents have chosen not to defend this case despite having received the notice in this petition. The names of the respondents 2, 3 & 4 are also printed in the cause list today. The name of the learned counsel for the first respondent is also printed in the cause list today but he has chosen not to appear.

6. When there are valid Arbitration Agreements and since, the respondents have not responded to the notice sent by the petitioner, this Court has to necessarily appoint an Arbitrator, who will have to decide the dispute between the parties on merits and in accordance with law.

7. For the foregoing reasons and in view of the Arbitration Agreements available, this Court appoints Mr.John R.D. Santhosham, Additional District Judge (Retired), as the Sole Arbitrator, to adjudicate the dispute between the petitioner and the respondents. Accordingly, this Arbitration Original



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Petition is allowed as prayed for, by issuing the following directions:-

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(a) This Court appoints Mr.John R.D. Santhosham, Additional District Judge (Retired), having his residence at B-133, Balaji Street, Algappan Nagar, Madurai, Mobile No.:7708256500, as a Sole Arbitrator, to adjudicate the dispute between the petitioner and the respondents, arising out of the three term loans availed by the respective respondents from the petitioner.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the Arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

20.07.2023

Index: Yes/ No
Internet: Yes/No

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ABDUL QUDDHOSE, J.

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