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Arb.O.P (Com.Div.) No.256 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.256 of 2023

M/s.IndoStar Capital Finance Limited,
having its registered office & corporate office at
One Indiabulls Center, 20th Floor,
Tower 2A, Jupiter Mills Compound,
Senapati Bapat Marg, Mumbai 400 013
and having its Head Office at
IndoStar Tower, 3rd Floor,
22 & 23, Venkatanarayana Road,
T.Nagar, Chennai 600 017, Tamil Nadu, India,
Represented by its Authorised Signatory,
Mr.Saravanan K R

... Petitioner

Vs.

1.Shibin Raj
2.Gracy T

... Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the differences and disputes between the parties under the said agreement dated 27.10.2021 in respect of Loan No.CVNEYKA0104987.



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For Petitioner : Mr.M.Arunachalam
For Respondent : Mr.D.Dinesh

ORDER

This Arbitration Original Petition is filed to appoint a sole Arbitrator to adjudicate the differences and disputes between the parties under the said agreement dated 27.10.2021 in respect of Loan No.CVNEYKA0104987.

2. The learned counsel for the petitioner would submit that the petitioner had granted loan to the respondent by virtue of a loan agreement dated 27.10.2021. After receipt of the loan amount, not even a single instalment had been paid by the respondent. Therefore, the petitioner had sent a notice under Section 21 of the Act to the respondent. However, there is no response for the said notice and hence, the present petition is filed.

3. The learned counsel for the petitioner would submit that the present dispute has to be referred to the Arbitration in terms of Clause 37 of the said loan agreement, which is extracted hereunder:



“37. All disputes, differences and/or any claim arising out of or in connection with this loan agreement, whether during its subsistence or thereafter shall be settled by arbitration accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendment thereof and shall be referred to the sole Arbitrator nominated by the Lender. The award passed by the arbitrator shall be final and binding on all the parties to this agreement. In the event death of the arbitrator or resignation of the arbitrator or arbitrator unable or unwilling to act as the arbitrator for any reason, the lender shall appoint another person to act as the arbitrator for the dispute. The arbitrator so appointed shall be entitled to pass interim order or final order on the hypothecated asset and also any other asset/securities furnished by or on behalf of the Borrower or Guarantor. The venue of the arbitration proceedings shall be at Chennai or such other place/location/city which the lender at its discretion may decide at the time of execution of this agreement and the proceedings shall be conducted in the English Language.”

4. The learned counsel appearing for the respondent would also submit that the present dispute is arising out of the said loan agreement and the same can be referred to Arbitration and hence he has no objection for the appointment of sole Arbitrator.



5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. In view of the above, this Court is satisfied that the present dispute is arising out of the said loan agreement and the same is arbitrable in terms of Clause 37 of the loan agreement. Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes.

7. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.Arun C.Mohan, Advocate, No.D4, III Floor, Ceebros Building, 32, Cenotaph Road, Teynampet, Chennai 600 018, Mobile No:9600020715, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.



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iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

8. With the above directions, this Arbitration Original Petition is allowed.

22.06.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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KRISHNAN RAMASAMY.J.,
nsa

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