



WEB COPY



ARB.O.P.(Com.Div) No.326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.326 of 2023

Tata Capital Financial Services Limited,
Rep. by its Authorised Representative
11th Floor, Tower A, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013.
POA Mr.Noyal James

Also at

1st Floor, Centennials Square,
6A, Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

... Petitioner

Vs.

1.Sri Murugan Agency,
2/572, Trichy-Dindigul National Highway Road,
Chetti Chathram Village, Karavampatti,
Manapparai, Trichy, Tamil Nadu – 621 306.
Email: srimuruganagency.kpi@gmail.com

2.Ponnusamy Manivel,
Proprietor of Sri Murugan Agency,
No.17/73, Vadakkuserpatty,
K. Periapatti North, K. Periyampatti,
Manapparai Taluka, Tiruchirapalli,
Tamil Nadu – 621 306.

3.Thiyagarasu Ponnusamy

... Respondents



ARB.O.P.(Com.Div) No.326 of 2023

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate upon the dispute arisen between the petitioner and the respondents.

For Petitioner : Ms.Abitha Banu
For Respondents : No appearance

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.

2. The petitioner is a Non-Banking Financial Institution. The first respondent has availed a loan from the petitioner under a Loan cum Guarantee Agreement dated 30.12.2021 read with clause 23 of the Master Terms and Conditions Agreement dated 31.12.2018 (hereinafter called as 'the said Agreement'). The respondents 2 and 3 are the guarantors to the loan transaction. There seems to be a dispute arising out of the same. There exists an arbitration clause in the said Agreement dated 30.12.2021, which is extracted hereunder:-

“12.Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the facility or as to



ARB.O.P.(Com.Div) No.326 of 2023

WEB COPY

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 arbitration 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 names 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
(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 receive 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 objection as per (ii)



ARB.O.P.(Com.Div) No.326 of 2023

WEB COPY

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 reenactment 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.”

3. The petitioner has also invoked arbitration in accordance with the arbitration clause by sending a notice to the respondents on 15.05.2023. The arbitration invocation notice dated 15.05.2023 has also been served on the respondents as seen from the tracking report. However, no response has been received by the petitioner from the respondents for the same. Since there was no consensus between the parties with regard to the name of the Arbitrator, the petitioner has filed this petition seeking for appointment of an Arbitrator by this Court.

4. There is no representation for the respondents today. The names of the respondents are also printed in the cause list. Since there is a valid



ARB.O.P.(Com.Div) No.326 of 2023

arbitration clause available in the said Agreement dated 30.12.2021, which is the subject matter of dispute and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Act.

5. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Dr.V. Suresh, Advocate, having Office at Hussaina Manzil, 3rd Floor, No.255, (Old No.123), Angappan Naicker Street, Chennai – 600 001, Mobile No.: 9444231497, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Loan cum Guarantee Agreement dated 30.12.2021 read with clause 23 of the Master Terms and Conditions Agreement dated 31.12.2018, on merits and in accordance with law.

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



WEB COPY



ARB.O.P.(Com.Div) No.326 of 2023

ABDUL QUDDHOSE, J.

Sni

(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.

08.09.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

Sni

Arb.O.P.(Com.Div) No.326 of 2023