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Arb.O.P (Com.Div.) No.261 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.261 of 2023

M/s.Sundaram Finance Limited,
No.21, Patullos Road,
Chennai 600 002,
Represented by its Authorised Signatory,
Mr.S.Sugavanam.

... Petitioner

Vs.

1.V.Ramalingam
2.V.Chandrasekar

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 12.10.2017 in respect of contract bearing No.M028800350.

For Petitioner : Mr.M.Arunachalam
For Respondents : Mr.K.Bijay Sundar



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ORDER

This Arbitration Original Petition has been filed to appoint a sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 12.10.2017 in respect of contract bearing No.M028800350.

2. The learned counsel for the petitioner would submit that the respondents had approached the petitioner for loan facility and had entered a loan agreement dated 12.10.2017 and the present dispute is arising out of the said loan agreement.

3. He would further submit that there is default in repayment of the loan amount by the respondent. With regard to the same, the petitioner had sent a legal notice dated 06.03.2019 and also a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) dated 27.08.2019 to the respondent. In spite of the said notices, the respondents had not come forward to settle the dues. Though, the present dispute is arbitrable by the sole Arbitrator appointed by the claimant as per the Clause 22(a) of the loan agreement, in view of the law laid down by the



Hon'ble Apex Court that the unilateral appointment is not in accordance with law and if any award is passed by the said Arbitrator, the same is not sustainable, the petitioner approached this Court for appointment of Arbitrator.

4. The Clause 22(a) of the agreement reads as follows:

“22. (a) All disputes, differences and/or claim, arising out of this agreement, whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Managing Director of the Lender. It is agreed that the sole Arbitrator nominated under this Clause shall adjudicate the disputes, differences and/or claims on the basis of the written pleadings, documents and submissions filed by the parties, dispensing with the oral evidence and technical formalities. The award given by such an arbitrator shall be final and binding on the Borrower/Co-Borrower to this agreement.”

5. By referring the above clause, the learned counsel for the respondent would submit that the present dispute is arising out of the loan



agreement and he would also request that the Arbitrator can decide the dispute without dispensing with the oral evidences and technical formalities.

Therefore, he would object the said provision of Clause 22(a) of the loan agreement and insisted that the trial has to be conducted based on the adversarial system of trial.

6. The learned counsel for the petitioner had also agreed with the submission made by the respondent.

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

8. In view of the above, this Court is satisfied that the present dispute is arising out of the loan agreement and the same is arbitrable in terms of Clause 22(a) of the said agreement and is inclined to appoint an Arbitrator. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.D.Selvaraju, Advocate, No.303, Law Chambers,
High Court Buildings, Chennai 600 104, Mobile
No:9444088288, is appointed as sole arbitrator to enter upon



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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.

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.

9. As contended by the learned counsel for the respondent, from a perusal of Clause 22(a) of the agreement, it appears that there is a provision for Arbitrator to decide the dispute on the basis of the written pleadings, documents and submissions filed by the parties, dispensing with the oral evidences and technical formalities. However, this Court is of the view that when the trial is conducted in the adversarial system of trial, there is no



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question of dispensing with the oral evidence and technical formalities.

Therefore, this Court directs the Arbitrator to conduct the proceedings by permitting the parties to let in the oral and documentary evidences and also to permit them to make the oral and written submissions without dispensing any procedure as stated in the clause 22(a) of the agreement.

10. Further it is made clear that it is up to the parties to make their claim and counter claim before the learned Arbitrator and the learned Arbitrator shall decide the same on merits and in accordance with law.

11. Accordingly, this Arbitration Original Petition is allowed. No costs.

26.06.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,

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