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Arb.OP.(comdiv) No.344 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.344 of 2022

Green Malabar Finance Ventures Limited,
Awifs Space Solutions, Primus Building,
Door No.SP-7A, Room No.207, 2nd floor,
Guindy Industrial Estate, Chennai – 32.
Rep. By its Authorised Signatory
Mr.R.Ramesh

.. Petitioner

-VS-

1.Mr.Kannan
2.Mr.Ramesh
3.Mr.Balasubramanian
4.Mr.Hari Ganesh
5.Mr.Achi Raman

.. Respondents

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator as per Clause 16 xv of the Loan Agreement dated 19.08.2019.

For Petitioner : Mr.R.Dinesh Kumar

For Respondents : No Appearance



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ORDER

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 financial institution. Under the loan agreement dated 19.08.2019, they have lent money to Prema Shanmugam, who died on 27.01.2020. The death certificate of Prema Shanmugam has also been produced by the petitioner.

3. The petitioner claims that the respondents are the legal representatives of the deceased Prema Shanmugam. According to the petitioner, the said Prema Shanmugam committed default in the repayment of the loan as per the loan agreement dated 19.08.2019. A legal notice dated 01.07.2021 has also been issued by the petitioner to the respondents calling upon them to pay the outstanding dues to the petitioner. The respondents have also sent a reply on 13.07.2021 and 22.07.2021. The loan agreement entered into between the petitioner and the said Prema Shanmugam contains an arbitration clause which is extracted hereunder:-



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“xv) Arbitration:-

In the event of any dispute or differences arising under this agreement including any dispute as to any amount outstanding, the real meaning or purport hereof (dispute), such dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or re-enactment thereof by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be at as decided by the lender and the arbitration shall be conducted in English language.”

4. Since a dispute has arisen out of the loan agreement dated 19.08.2019, the petitioner has invoked the arbitration in accordance with the arbitration clause by issuing a notice to the respondents on 18.10.2021. However, despite receipt of the same, the respondents have neither appointed their arbitrator nor have chosen to send a reply. In such circumstances, the petitioner has filed this petition under Section 11 of the



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Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

5. Notice to the respondents has been duly served and they are represented by a counsel. There is no representation on the side of the respondents today. Even on the last hearing date i.e. on 13.07.2023, there was no representation on the side of the respondents.

6. Since there is a valid arbitration agreement between the parties to the dispute as extracted supra and that the petitioner has also invoked the arbitration clause by issuing a notice to the respondents on 18.10.2021 as per the provisions of Section 21 of the Arbitration and Conciliation Act, 1996, which has not been responded, this Court will have to appoint an arbitrator to decide the dispute between the parties. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Mr.Vishnu Mohan, advocate, having office at No.8, 8th street, Dr.Radhakrishnan Salai, Mylapore, Chennai – 4 (Mobile No.9381353434), as the sole arbitrator to adjudicate the dispute



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between the petitioner and the respondents arising out of the loan agreement dated 19.08.2019.

(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.

27.07.2023

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ABDUL QUDDHOSE, J.

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