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Arb.O.P.(Com.Div.).No.313 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.313 of 2023

M/s.Shriram Finance Limited,
(Formerly known as M/s.Shriram City
Union Finance Limited)
Having its Registered Office at
Sri Towers, Plot No.14A,
South Phase, Industrial Estate,
Guindy, Chennai – 600 032
and one of its branch office at
No.13, 3rd Floor Meenakshi Towers,
Opposite Ramakrishnan School Ground,
G.N.Shetty Road, Rajamannar Street,
T.Nagar, Chennai – 600 017.
Represented by its Authorized Signatory,
Mr.Mathew Arun.S

... Petitioner

Vs.

1.Shobha Asars Private Limited,
Represented by its Director Sidaarth H Asar,
No.42, Pharma Search House,
4th Floor, BG Kher Marg Worli,
Maharastra, Mumbai – 400 018.
presently having address at
DELSTAR CHS,
Ground Floor, NS Patkar Marg,
Kemps Corner, Mumbai – 400 026.

2.Sidaarth H Asar



Arb.O.P.(Com.Div.).No.313 of 2023

3.Shobha H Asar

... Respondents

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(Name of the first respondent was amended as per the order dated 16.10.2023 in A.No.5386 of 2023)

Prayer : Original Petition is filed under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996, praying to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the agreement dated 15.01.2019 in respect of contract bearing No.CDBDRTF1901170004.

For Petitioner : Mr.M.Arunachalam

For Respondents : Left

ORDER

The petitioner has filed this petition under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the Agreement dated 15.01.2019 in respect of contract bearing No.CDBDRTF1901170004.

2. Despite notice being served on the respondents through substituted service of notice and the name being printed in the Cause List, there is no representation on behalf of the respondents.



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3. The respondents have entered in to an Enterprise Finance Agreement/Business Loan Agreement dated 15.01.2019. In this connection, the petitioner had earlier unilaterally appointed a Sole Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Thereafter, the Sole Arbitrator has recused himself based on the objections raised by the respondents on account of unilateral appointment.

4. The aforesaid Enterprise Finance Agreement/Business Loan Agreement dated 15.01.2019 contemplates resolution of dispute between the petitioner and the respondents through arbitration. Relevant Clause relating to Arbitration reads as under:-

"18. Arbitration and Dispute Settlement:

a) Without prejudice to the Lender's right available to it under the SARFAESI Act, 2002, all disputes, differences and/or claims, 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 other statutory modification or re-enactment for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender. The applicable law shall be Indian laws. In the event of incapacity or resignation or death of the sole arbitrator so appointed, the Lender shall be entitled to appoint another arbitrator in place of the earlier arbitrator, and the proceedings shall continue from the stage at which the predecessor had left.



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b) The award given by the arbitrator shall be final and binding on the parties to this Agreement. The cost of the Arbitration shall be borne with by the Party/ies, in accordance with the Award passed by the Arbitrator.

c) The venue of Arbitration shall be as specified in Schedule 1 hereto and the proceedings shall be conducted in English language.

d) The Borrower and Guarantor hereby agree and confirm that the Lender shall be permitted to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and any amendments thereto in order to recover its dues under this Agreement from the Borrower/Guarantor.

19. Jurisdiction and Governing Law:

Subject to the Arbitration Clause mentioned above, this Agreement shall be governed and construed in accordance with the substantive laws of India and the parties hereto submit to the exclusive jurisdiction of the Courts, situate at the place as specified in schedule 1 hereto."

5. The learned Arbitrator had however recused himself after issuing notice to the respondents.

6. The respondents had appeared before the learned Arbitrator and had raised objections on account of unilateral appointment.



Arb.O.P.(Com.Div.).No.313 of 2023

7. Considering the fact that the respondents have not come forward to consent for appointment of Arbitrator after objection was raised before the learned Arbitrator and have not come forward to appear before this Court after evaded service of notice, Court is inclined to appoint **Mr.K.S.Jeyaganeshan, Advocate, Enrollment No.1558/1999, having Office at No.12/45, Quality Complex, 3rd Floor, Arunachalam Road, Saligramam, Chennai - 600 093, (Mobile No.9444019757)** as a Sole Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

8. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

9. Since the respondents are from Mumbai, the learned Arbitrator may also consider the conduct of the arbitral proceedings through Video



Arb.O.P.(Com.Div.).No.313 of 2023

Conferencing if such request is made on behalf of the respondents.

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10. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

11. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

12. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

20.12.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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Arb.O.P.(Com.Div.).No.313 of 2023

C.SARAVANAN, J.

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Arb.O.P.(Com.Div.)No.313 of 2023

20.12.2023