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Arb.O.P.(Comm.Div.)No.478 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.)No.478 of 2022

Shriram Finance Limited,
No.13, 3rd Floor, Meenakshi Towers,
Opposite Ramakrishnan School Ground,
G.N.Shetty Road, Rajamannar Street,
T.Nagar, Chennai – 600 017
Land Mark (Ramakrishna School Ground)
Represented by its Senior Manager
Mr.Mathew Arun
(amended as per order dated 30.01.2023 in A.No.251 of 2023)

...Petitioner

Versus

1.DNYANGANGA BOOKS DISTRIBUTORS
REPRESENTED BY ITS PROPRIETOR
SUSHANT KISHORRAO KALE
H.NO.2908/G SHOP NO.G 19 NIT COMPLEX
NAGPUR, SAKKARDARA CHOWK, SAKKARDARA,
NAGPUR – 440 009.

2.KANCHAN KISHORRAO KALE

3.SUSHANT KISHORRAO KALE

...Respondents

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator to adjudicate



upon the differences and disputes between the parties under the agreement dated 27.01.2020 in respect of contract bearing No.CDNRNTF2001310001.

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For Petitioner : Mr.M.Arunachalam

For Respondents : No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the agreement dated 27.01.2020 in respect of contract bearing No.CDNRNTF2001310001.

2. The learned counsel for the petitioner submitted that during the month of January 2020, the respondents approached the petitioner company for loan facility for a sum of Rs.10,04,449/-. The first respondent entered into a Loan Agreement bearing No.CDNRNTF2001310001 dated 27.01.2020 with the petitioner company and availed a sum of Rs.10,04,449/- as loan. The respondents 2 & 3 stood as Guarantors to the said loan. As per the said Loan Agreement, the respondents shall repay the loan amount together with interest at the rate of 21% per annum in 36 Equated Monthly Installments (EMIs). The first installment for the said



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Loan Agreement commenced on 05.03.2020 and the last installment will end on 05.02.2023. After availing the loan, the respondents committed default in making payments. Hence, the petitioner sent a Loan Recall Notice dated 28.05.2021 to the respondents, calling upon them to settle the outstanding loan amount, for which, there was no response from the respondents. Though the petitioner repeatedly demanded the respondents to repay the outstanding loan amount, till date, they did not come forward to repay the same.

2.1. Further, the learned counsel submitted that as per Clause 18 of the Loan Agreement entered into between the parties, if disputes and differences arising or performance or non-performance of the agreement, the same shall be settled by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause 18 of the Loan Agreement dated 29.03.2019 is extracted hereunder:

“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



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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.

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 I 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.”

Hence, the petitioner company vide Reference Letter dated 22.10.2021 referred the matter to Arbitration by nominating Mrs.C.Deepa Nandhini, Advocate as Sole Arbitrator to adjudicate and resolve the dispute involved herein. A copy of the said Letter was forwarded to the respondents respectively.



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2.2. Subsequently, the learned Sole Arbitrator issued a notice dated 10.11.2021 along with disclosure taking the case on file as CDN/SCUFL/178/2021 and claim statement and documents, to the respondents' counsel. After receiving the notice issued by the learned Sole Arbitrator, the respondents sent their objections by way of petition, stating that the unilateral appointment of Sole Arbitrator is contrary to the dictum laid down by the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC and Anr. Vs. HSCC (India) Ltd.***, reported in ***(2020) 20 SCC 760***. Meanwhile, the learned Sole Arbitrator vide proceedings dated 08.02.2022, recused herself from this case. Aggrieved over the same, the petitioner has filed the present petition for the aforesaid relief. Therefore, the learned counsel prayed this Court to appoint a Sole Arbitrator, for adjudicating the dispute between the parties.

3. Despite the service of notice, none appeared on behalf of the respondents. This shows that the respondents are not interested in prosecuting the case.



4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. From a perusal of the records, it is seen that the first respondent borrowed a sum of Rs.10,04,449/- as loan from the petitioner company, by way of entering into a Loan Agreement dated 27.01.2020 with the petitioner company. The respondents 2 & 3 are guarantors to the said loan. Though the respondents agreed to repay the borrowed amount as per the terms and conditions of the said Agreement, they defaulted in making payments. Hence, the petitioner company initiated arbitration proceedings against the respondents as per Clause 18 of the said Loan Agreement and nominated a Sole Arbitrator to adjudicate the dispute involved herein. The Arbitration Notice was also issued to the respondents in this regard. After the receipt of said notice, the respondents raised their objections. While so, the learned Sole Arbitrator vide proceedings dated 08.02.2022, recused herself from this case. Hence, the petitioner has filed the present petition.

6. At this juncture, it would be pertinent to extract Section 21 of the Act hereunder:



“21. Commencement of arbitral proceedings. -

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

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A perusal of the above provision clearly denotes that the arbitration proceedings in respect of a dispute would commence only on the date on which a request for that dispute to be referred to arbitration is received by the respondent. What is required under Section 21 is that in the event if the parties agreed in a particular manner to commence the arbitration, the parties should follow the said procedure as agreed by them. In the event, if there is no such agreed procedure between the parties to commence the arbitration proceedings with regard to the dispute between them, the arbitral proceedings deemed to be commenced on a particular dispute, on the date on which a request for the dispute to be referred to arbitration is received by the respondent. Hence, the requirement of Section 21 of the Act is that the notice referring the dispute to the arbitration has to be reached the respondent and once if the respondent has received the said notice, the arbitral proceedings deemed to be commenced at once.



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7. As far as this case is concerned, the petitioner company sent a Reference Letter dated 22.10.2021 to one Mrs.C.Deepa Nandhini, Advocate, expressing its inclination to nominate her as Sole Arbitrator for adjudicating the dispute between the parties. A copy of said Reference Letter was also communicated to the respondents respectively. According to the respondents, the said Reference Letter is only a notice issued by the petitioner company and not the Arbitration Notice issued under Section 21 of the Act. However, this Court is of the view that the Reference Letter sent by the petitioner company is the sufficient notice since it fulfills the requirements contemplated under Section 21 of the Act.

8. Though the issue involved in the case on hand is arbitrable as per the provisions of the Act, unilateral appointment of Sole Arbitrator by the petitioner is against the dictum laid down by the Hon'ble Supreme Court in the decision cited *supra* and non-est in the eye of law because the petitioner herein is a party who has interest in the outcome of the dispute involved herein.



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9. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel for the petitioner, this Court is inclined to pass the following order:

(i) **Mr.Muthuchharan Sundaresh, Advocate, Enrollment No.2892/2018 having office at No.244, Ragendra Garden, Vettuvankanni, Chennai – 600 041, Mobile No.7397261623** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondents before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondents.



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10. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

24.02.2023

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Index : Yes/No

Speaking Order (or) Non Speaking Order



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KRISHNAN RAMASAMY, J.

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