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ARB.O.P.(Com.Div) No.329 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.329 of 2023

M/s.Tata Capital Financial Services Limited
having its registered office at 11th Floor, Tower – A,
Peninsula Business Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400013.

Having one of its branch office at:

1st Floor, Centennial Square, No.6,
Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

Rep. by its Authorized Signatory/POA
Mr.Noyal James

... Petitioner

Vs.

Mr.P.D. Subheesh,
Proprietor of M/s.Komal Agencies,
Door No.4/46-C, New No.V/52,
Near APL School, Kozhikkottirri, Pattambi,
Palakkad, Kerala – 679303.

Also at

Puthuparambil, Kozhikkottirri PO,
Muthuthala, Kolikkottusseri,
Palakkad, Kerala – 679303.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under
Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to



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appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 23.01.2020.

For Petitioner : Mr.Arunachalam

For Respondent : 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 respondent has availed loan from the petitioner under Channel Finance Agreement dated 23.01.2020. There seems to be a dispute arising out of the same. The petitioner has already recalled the loan by issuing notice to the respondent on 22.06.2021. There is an arbitration clause available in the Channel Finance Agreement dated 23.01.2020, 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 the interpretation, validity,



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implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents 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 to be held at the place as mentioned at Serial No.17 of Annexure 1 hereto, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English Language. Cost of arbitration shall be borne by the Obligors.”

3. In accordance with the arbitration clause, the petitioner has invoked arbitration by issuing notice to the respondent on 02.08.2021. In fact, earlier, the Arbitrator appointed by the petitioner did not act upon the reference in view of the decision rendered by the Hon'ble Supreme Court in the case of '**Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.**', reported in '**(2020) 20 SCC 760**', which clearly prohibits a party to the dispute unilaterally appointing an Arbitrator. Since the unilateral appointment of an Arbitrator is not legally permissible, the



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petitioner has filed this petition seeking for appointment of an Arbitrator by this Court.

4. Notice on the respondent has been duly served. The name of the respondent is also printed in the cause list today. Despite the same, there is no representation on the side of the respondent.

5. Since there is a valid Arbitration Agreement between the petitioner and the respondent and the petitioner has also invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 02.08.2021 and 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 Arbitration and Conciliation Act.

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

(a) This Court appoints Mr.V.P. Raman, Advocate, having
Office at Flat No.02, 4th Floor, Ajay Apartments, New



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No.15, Old No.7, Hanumantha Road, Balaji Nagar,
Royapettah, Chennai - 14, Mobile No.:9840885757, as
the Sole Arbitrator to adjudicate the dispute between
the petitioner and the respondent arising out of the
Channel Finance Agreement dated 23.01.2020, 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.
- (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.

01.09.2023

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

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ABDUL QUDDHOSE, J.

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