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Arb.O.P.(Com.Div.)No.384 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.384 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
Authorised Signatory / Power of Attorney
Mr.Mathewarun.S.

.. Petitioner

Vs.

1.M/S.QUOSPHERE INFOSOLUTIONS
PRIVATE LIMITED,
REP. BY ITS DIRECTOR KUSHAL JAISWAL,
OFFICE NO-1004, 10th FLOOR, RUPA SOLITARE,
PLOT NO-A1, SECTOR-1, MBP MAHAPE,
NAVI,
MUMBAI – 400 710.

2.KUSHAL JAISWAL

3.RICHA JAISWAL

.. Respondents



Prayer: Original Petition is filed under Section 11(6) r/w 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 said agreement dated 26.06.2019 in respect of contract bearing No. CDBDRTF1906240005.

For Petitioner : Ms.B.Narmadha
for Mr.M.Arunachalam

For Respondents : No appearance

ORDER

This petition has been filed under Section 11(6) r/w Section 15(2) of the Arbitration and Conciliation Act, 1996 to appoint / substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 26.06.2019 in respect of contract bearing No. CDBDRTF1906240005.

2.This Case was heard at length and was adjourned to be listed today to await for the order of the Hon'ble Supreme Court on the issue relating to stamp duty payable on agreements containing Arbitration clause. Yesterday, i.e.,13.12.2023 the Hon'ble Supreme Court has clarified



the law in Curative Petition (C) No. 44 of 2023 in Review Petition (C)

No.704 of 2021 in Civil Appeal No. 1599 of 2020 as follows:-

“43. The procedure contemplated by the Stamp Act facilitates the collection of revenue. It permits instruments to be impounded not only by persons in charge of a public office or those who are empowered by law to receive evidence but also by any person who is empowered to receive evidence by consent of parties. The statute then sets out the procedure to be followed upon impounding a document. This procedure ensures that stamp-duty is paid. After the payment of the appropriate amount under the appropriate description in Schedule I and the penalty (if any), the Stamp Act provides for the certification of such payment by an endorsement by the appropriate authority. Once an instrument has been endorsed, it may be admitted into evidence, registered, acted upon or authenticated as if it had been duly stamped.

...

*125. In view of the above discussion, the issue that comes up for our consideration is whether an issue of stamping is a jurisdictional issue. Jurisdiction is generally defined as the power of a court or tribunal to hear and determine a cause, and to adjudicate or exercise any judicial power in relation to such cause.¹²⁶ Jurisdiction refers to the authority of a court or tribunal to decide matters that are litigated before it or to take cognizance of matters presented before it in a formal way for its decision. In *Official Trustee, West Bengal v. Sachindra Nath Chatterjee*, ¹²⁷ this Court held that for a court to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought. In *NTPC v. Siemens Atkeingesllchaft*, ¹²⁸ this Court observed that any refusal to go into the merits of a claim may be in the realm of jurisdiction. Accordingly, it was observed that the issue of limitation goes to jurisdiction because if a claim is barred by limitation, a tribunal can refuse to exercise its jurisdiction.*

*126. Section 35 of the Stamp Act mandates that an unstamped instrument cannot be acted upon unless it is duly stamped. The question is whether a tribunal can effectively exercise its jurisdiction to settle the claims between the parties until stamp duty is paid on the underlying instrument. In view of the decision of this Court in *Uttarakhand Purv Sainik Kalyan Nigam Ltd**



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(supra), the scope of an arbitral tribunal's authority is wide enough as to comprehend all preliminary issues affecting its jurisdiction, including the issue of sufficiency of stamping.

127. In case the issue of stamping is raised before an arbitral tribunal, Sections 33 and 35 of the Stamp Act make it evident that a person having authority by "consent of parties" to receive evidence is empowered to impound and examine an instrument. A person having authority "by consent of parties" to receive evidence includes an arbitral tribunal which is constituted by consent of parties.

...

224. The conclusions reached in this judgment are summarised below:

- a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;*
- b. Non-stamping or inadequate stamping is a curable defect;*
- c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*
- d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*
- e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.*

225. The Registry is directed to take administrative directions from Hon'ble Chief Justice of India for placing the matters before an appropriate Bench.."



3.Considering the above, there is no impediment for appointing an Arbitrator to resolve the dispute between the parties through Arbitration.

Applicant is directed to cure the defect as far as payment of Stamp Duty.

4.The matter was called in the forenoon and there was no representation and the matter was called again in the afternoon. Again there was no representation. Hence, this order is being passed.

5.Considering the same, Court is inclined to appoint **Mr.N.R.S.Ganesan, Retd. District Judge, (Mobile No.: 9884261111)** residing at **No.1/1, West Avenue, Kodambakkam, Chennai – 600 024** as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties in accordance with the respective agreement under which the Arbitration clause has been prescribed for resolving the dispute.

6.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.

7.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.

8.Considering the fact that the respondents are from Mumbai, liberty is given to the respondents to appear before the learned Arbitrator through Video Conferencing. It is made clear that, if the Stamp Duty on the agreement is not paid, the award to be passed shall not be enforceable.



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9.The Original Petition is allowed with the above observations,
leaving the parties to bear their own costs.

10.Since the Court has appointed an 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.

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