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Arb. O.P(Com.Div). No.394 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.394 of 2022

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 – 400 013.

Having one of its branch office at:
1st Floor, Centennial Square, No.6,
Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

Represented by its Authorised Signatory,
Noyal James

... Petitioner

Vs.

1.M/s.R.S.M Enterprises,
Represented by its Partners,
No.1/2, 1st Ayyavu Street,
Jaffer Khanpet,
Guindy (C), Chennai,
Tamil Nadu – 600 083.
Email:rsmenterprises2012@gmail.com

2.A.Alexander,
No.12/6, Annai Illam,
4th Ayyavu Street, Jaffer Khanpet,
Guindy (C), Chennai,
Tamil Nadu – 600 083.

... Respondents



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PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the petitioner and the respondents under the Finance Agreement dated 08.06.2020

For Petitioner : Mr.M.Arunachalam

For Respondents : No Appearance

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1956, seeking to appoint an Arbitrator for adjudication of dispute between the petitioner and respondents under the Fianance Agreement dated 08.06.2020.

2.Though notice was duly served against the respondents, when the matter came up for hearing on the last occasion, none appeared on behalf of the respondents and therefore, the matter was adjourned to 07.02.2023 for hearing the submissions of the respondents and directed the Registry to post the matter under the caption “For Orders”.



3. Accordingly, the matter is listed today. Today also none appeared on behalf of the respondents, which shows that the respondents are not interested to prosecute the case. Hence, this Court proceeds to pass the following orders.

4. Learned counsel appearing for the petitioner would submit that they have sanctioned the working capital facility vide sanction letter dated 22.05.2020. The said sanction letter was also re-newed in favour of the petitioner by the respondent vide letter dated 08.06.2020. However, the respondents did not make the payments as agreed by them vide sanction letter. Hence, the petitioner sent a notice dated 21.01.2022 calling upon the respondents to pay Rs.22,37,478.19/-. Despite various demands and reminders, the respondents have not replied to any of the demands made by the petitioner. With no other option, the petitioner invoked Arbitration Clause Nos. 12 and 13 of the agreement dated 08.06.2020 and appointed Sole Arbitrator to resolve the disputes between the petitioner and the respondents. The above said clauses of the Finance Agreement are extracted hereunder:

“Clause 12: Arbitration

If any dispute, difference or claim arises between any of the Obligor and the Lender in connection with the Facility or as to the interpretation, validity, 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.

Clause 13: Jurisdiction

Subject to Clause 12 above, the Parties hereto agree that all disputes arising out of and/or in relation to this Agreement shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No. 18 of Annexure 1 hereto. The Lender may, however, in its absolute discretion commence any legal action or proceedings arising out of this Agreement in any court, tribunal or others appropriate forum and Obligors hereby consents to that jurisdiction.”

5.The learned Sole Arbitrator issued notice to both the parties. For which, the respondents filed their objection as memo on 12.07.2022, challenging the appointment of Arbitrator as to the independence and impartiality. Due to



which, the learned Sole Arbitrator recused from the arbitral proceeding. Hence, the petitioner approached this Court for appointment of Sole Arbitrator.

6.Considering the submissions made by the learned counsel appearing for the petitioner and the averments made in the affidavit, this Court is of the view that the present dispute arising out of the Channel Finance Agreement and the sanction letter dated 08.06.2022 and accordingly, the present dispute is arbitrable in terms of the said agreement. Hence, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents.

7.Accordingly, **Mr.Thriyambak J.Kanna, Advocate, having office at 119/65, 1st Floor, Dr.Radhakrishnan Salai, Mylapore, Chennai – 600 004, Mobile No.9884624563** is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.



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8.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an 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.

07.02.2023

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