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Arb.O.P.(Com.Div.) No.323 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.323 of 2023

M/s.Samunnati Financial Intermediation and
Services Private Limited,
Chennai-600 041.

... Petitioner

Versus

1.M/s.Upsouth Cloud Kitchens Pvt. Ltd.,
Karnataka-560 025.

2.R.Venkata Rajendran

3.Vijay Abhimanyu R.

4.M/s.Billion Smiles Hospitality Pvt. Ltd.,
Karnataka - 560 017.

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator in terms of "Clause No.15.2 contained in the Term Loan Agreement dated 30.03.2021 and Clause No.13 contained in Deed of Hypothecation dated 30.03.2021 for the purpose of adjudicating upon on the disputes and differences between the parties under the said agreements dated 30.03.2021.



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For Petitioner : Mr.R.Umasudhan

For Respondents : No appearance

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.

2.The respondents have been served through substituted service. The names of the respondents are also printed in the cause list today. Despite the same, the respondents have not entered appearance in this matter. Hence, they are set exparte by this Court.

3.The petitioner is a Non Banking Financial Institution. The first respondent has availed a loan from the petitioner under a Term Loan Agreement dated 30.03.2021. The respondents 2 and 3 are the Guarantors and they have also executed a Deed of Personal Guarantee dated 30.03.2021 in favour of the petitioner and a Deed of Hypothecation dated 30.03.2021 has also been executed by the first respondent in favour of the petitioner.

4.According to the petitioner, the respondents are defaulter in



repayment of the Term Loan Agreement. There seems to be a dispute arising out of the Term Loan Agreement, Deed of Hypothecation and the Deed of Personal Guarantee, all dated 30.03.2021. There is an Arbitration Clause available in the Term Loan Agreement and Deed of Hypothecation, both dated 30.03.2021 and the same are extracted hereunder:

' 15. Governing Law and Jurisdiction:

15.1. This Agreement shall be governed by and construed and interpreted in accordance with, the laws of the Republic of India. Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be subject to the jurisdiction of the Courts in Chennai, Tamilnadu.

15.2. All disputes, differences or claims of any kind whatsoever arising between the parties hereto, out of or in connection with this Agreement, or the validity, interpretation, implementation or alleged breach of the terms of this Agreement or omitted to be done pursuant to this Agreement, shall be first attempted to be resolved amicably between the parties by mutual negotiations within 30 (thirty) days of commencement of negotiations. Failing which, such dispute shall be referred to a sole arbitrator to be appointed by Samunnati. The arbitration



proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996, and shall be conducted in English. The arbitration shall take place at Chennai and shall be governed by the laws of India.

15.3.Nothing contained herein shall limit the right of Samunnati to initiate any proceedings in any court or tribunal of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.'

'13.Governing Law and Jurisdiction: This Deed shall be governed by and construed and interpreted in accordance with, the laws of the Republic of India. Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be subject to the jurisdiction of the Courts of the place of execution specified in Schedule A to the Agreement.

All disputes, differences or claims of any kind whatsoever arising between the parties hereto, out of or in connection with this Agreement, or the validity, interpretation, implementation or alleged breach of terms of this Agreement or omitted to be done pursuant to this Agreement, shall be first attempted to be



resolved amicably between the parties by mutual negotiations within 30 (thirty) days of commencement of negotiations. Failing which, such dispute shall be referred to a sole arbitrator to be appointed by the Company. The arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996 and shall be conducted in English. The arbitration shall take place at Chennai and shall be governed by the laws of India.'

5.The petitioner has invoked Arbitration in accordance with the Arbitration Clause by issuing notices to the respondents on 12.04.2023. The notices sent to the respondents have been returned as seen from the returned covers dated 15.04.2023. A statement of account has also been filed by the petitioner, which is dated 31.05.2023 disclosing that as on 31.05.2023, a sum of Rs.3,40,00,205/- is due and payable by the respondents to the petitioner.

6.Since there is a valid Arbitration Agreement between the parties, which is the subject matter of the dispute and the respondents have also not chosen to enter appearance and there is no consensus between the parties



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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.

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

(a)This Court appoints Hon'ble Mr.Justice V.Bharathidasan, Former Judge of this Court, having Office at No.22 (L-45), 2nd Main Road, Kamaraj Nagar, Thiruvannamipur, Chennai (Mobile No.9444383139) as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Term Loan Agreement, Deed of Hypothecation and the Deed of Personal Guarantee, all dated 30.03.2021, on merits and in accordance with law.

(b)The Arbitrator shall be paid his remuneration / fees as per the schedule agreed upon by the parties to the dispute.

(c)Both the parties shall equally share the Arbitrator's fees.



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(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.

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ABDUL QUDDHOSE, J.

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