IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.473 of 2022

M/s.Shriram City Union Finance Limited,
A Company having its Branch Office at:
No.12, Ramaswamy Street, T.Nagar,
Chennai – 600 017
rep. by its Authorised Signatory,
Ms.Navinaa P.N

...Petitioner

Versus

1.Mrs.Nagalakshmi.R

2.Mr.J.Raviraj

...Respondents

Original Petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996 for the following reliefs:

(a) To substitute the arbitrator appointed by the petitioner by appointing any fit and competent person as an Arbitrator so as to adjudicate the claim and the dispute between the petitioner and the respondents under the Loan Agreement dated 16.02.2019 and

(b) To direct the respondents to pay the cost of the petition.

For Petitioner	:	Mr.R.Umashankar
For Respondents	:	No Appearance

ORDER

The present petition has been filed under Section 15(2) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to substitute the Arbitrator appointed by the petitioner, by appointing any fit and competent person as an Arbitrator so as to adjudicate the dispute between the petitioner and the respondents arising out of the Loan Agreement dated 16.02.2019

2. The learned counsel for the petitioner submitted that the petitioner is a Non-Banking Finance Company carrying on the business of extending various finance facilities including Small – Medium Enterprise Finance. The 1st respondent requested the petitioner to avail finance facility to the tune of Rs.10,00,000/- for his working capital and allied business activities. Acceding the request of 1st respondent, the petitioner accepted to extend him the loan, pursuant to which, the 1st respondent entered into a Loan Agreement bearing No.ARUMKTF190214002 dated 16.02.2019 with the petitioner and availed a sum of Rs.10,00,000/- as loan from the petitioner

company. The 2nd respondent stood as a guarantor to the said loan. Under the said Loan Agreement, the 1st respondent agreed to repay the loan amount together with interest of Rs.6,59,840/- totalling to Rs.16,59,840/- in 48 monthly installments commencing from 10.03.2019 to 10.02.2023 and in case of default in payment of the installments, interest or other charges payable under the said Loan Agreement, the 1st respondent agreed and undertook to pay overdue interest at contractual rates computed at monthly rates on such unpaid amounts from the date of default to the date of payment. As security to the said loan, the 1st respondent mortgaged his property situated at Kanchipuram in favour of the petitioner by way of Deed of Simple Mortgage dated 13.02.2019.

2.1. Due to Covid-19, the petitioner granted moratorium for a period of four months from May 2020 to August 2020 and thereby, the tenure of the Contract got extended till 10.12.2023, as a result of which, the repayment schedule of the aforesaid Loan Agreement stood revised. As per the revised schedule, the respondents have to pay a sum of Rs.34,580/- per installment till November 2023 and to pay a sum of Rs.8,743/- on December 2023 towards the last installment. Further, as per the RBI notification, a sum of Rs.7,053/- being the Ex-Gratia was also credited to the 1st respondent's account and adjusted against the dues payable.

2.2. However, contrary to the terms and conditions of the aforesaid Loan Agreement, the respondents have committed a wilful default in making payment of installments to the petitioner. Hence, the petitioner vide Notice dated 31.01.2022, called upon the respondents to pay the outstanding amount of Rs.12,55,140/- along with future interest, cost and other charges applicable as on date of payment. Despite the receipt of said notice, the respondents did not come forward to clear the outstanding amount.

2.3. The learned counsel further submitted that as per Clause 18 of the aforesaid Loan Agreement, if any dispute or difference arises between the parties under the said agreement, the same shall be settled by arbitration in accordance with the provisions of the Act. For better appreciation, Clause 18 of the said Loan Agreement is extracted hereunder:

> *"**Clause 18***
> *(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 provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactments for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender. The applicable Laws shall be Indian Laws. In the event or 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 proceeding 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 parties in accordance with the award passed by the arbitrator.

(c) The venue of arbitration shall be as specified in Schedule – 1 hereto and the proceedings shall be conducted in English language.

(d) The Borrower and the Guarantor hereby agree and confirm that the Lender shall be permitted to invoke the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and any amendments thereto in order to recover the dues under the Agreement from the borrower/Guarantor."

Hence, the petitioner vide Letter dated 31.01.2022, nominated Mr.C.A.Ravichandiran, Advocate as an Arbitrator, to adjudicate the claim under the aforesaid Loan Agreement. The respondents vide Letter dated 18.02.2022 raised their objection to the appointment of Arbitrator. In the meanwhile, the learned Arbitrator vide Letter dated 31.03.2022 expressed his inability to continue with the arbitration proceedings. Therefore, left with no other alternative, the petitioner has filed the present petition for the relief stated *supra*.

3. Despite the service of notice and name of the respondents are being printed in today's cause list, none appeared on behalf of the respondents.

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

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute between the parties herein is arbitrable as per Clause 18 of the Loan Agreement dated 16.02.2019. Hence, this Court is inclined to pass the following order:

(i) **Mr.Suhrith Parthasarathy, Advocate, Jagathambal Colony, 2nd Street, Royapettah, Chennai – 600 014, Mobile No.8939717592** 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.

6. 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.

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Index : Yes/No

Speaking Order (or) Non Speaking Order

KRISHNAN RAMASAMY, J.

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