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Arb.O.P.(Com.Div.)No.402 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.402 of 2023

M/s.Newlink Overseas Finance Limited,
Represented by its Managing Director,
Mr.U.P.Prakasham,
Mamatha Complex,
Second Floor, No.25, Whites Road,
Royapettah, Chennai – 600 014.
Duly represented by its authorized
Signatory General Manager,
Mr.P.Viswanathan

... Petitioner

Vs.

1.M/s.Vijay Aqua Pipes Private Limited,
Represented by its Director,
No.1, First Link Street,
Raghavan Colony, Jaffer Khanpet,
Chennai – 600 083.

2.R.Thyagarajan

3.S.Nainar

4.Chidambaram Thiyagarajan

5.Sethumuthiah Venkatachalam

... Respondents



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Prayer: Original Petition is filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint an arbitrator to adjudicate the disputes between the Petitioner and the Respondents in terms of the Loan-Cum-Hypothecation Agreements as well as the Arbitration Agreements dated 30.09.2010, 30.10.2010, 09.11.2010 and 10.12.2010 and to direct the Respondents to pay costs.

For Petitioner : Ms.D.Sagunthala
For Respondents :

R1 and R2 : Mr.S.Charuhasan
for M/s.P.C.Hari Kumar and Associates

R3 to R5 : No Appearance

ORDER

This Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve the dispute between the parties/the petitioner and the first respondent.

2. The first respondent is the borrower with whom, four Agreements have been signed on 30.09.2010, 30.10.2010, 09.11.2010 and 10.12.2010. These agreements have been signed by the first respondent herein represented by its Director namely the second respondent R.Thyagarajan. Earlier, an unilateral appointment of an Arbitrator was made by the petitioner herein. Pursuant to which, an Award came to be passed on 24.07.2020 in C.P.(NOFL)No.3 of 2019.



3. The Award was challenged by the first, second and third respondents herein in Arb.O.P.(Com.Div.)No.33 of 2021. A detailed order came to be passed on 26.04.2023 by this Court whereby, the Award passed by the learned Arbitrator on 24.07.2020 in C.P.(NOFL)No.3 of 2019 was set aside on the ground that there was an unilateral appointment of the Arbitrator in violation of Section 12(5) of the Arbitration and Conciliation Act, 1996.

4. Under these circumstances, the Award was set aside. However, while setting aside the Award, the Court had given liberty to the petitioner herein to move the appropriate petition for appointment of an Arbitrator.

5. The Court while passing Order on 26.04.2023 in Arb.O.P.(Com.Div.)No.33 of 2021 has recorded the submission of the respondents that the claim is time barred. Today, the learned counsel for the first and second respondents would submit that no notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued and therefore, the present original petition is premature.

6. That apart, it is submitted that the petitioner has wrongly impleaded the second to fifth respondents merely on the ground that they are the Directors of the first respondent.



7. The learned counsel for the first and second respondents further submits that the second to fifth respondents are merely the Directors and are not the signatories of any of the four Agreements mentioned above in their individual capacity. It is therefore submitted that the prayer for appointment of Arbitrator is liable to be rejected.

8. That apart, the learned counsel for the first and second respondents would further submit that since notice under Section 21 of the Arbitration and Conciliation Act, 1996 has not been issued prior to filing this Original Petition, it is therefore liable to be dismissed on this count.

9. By way of rejoinder, the learned counsel for the petitioner would submit that indeed a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued on 31.07.2019 to all the respondents which was also duly received and acknowledged.

10. The learned counsel for the petitioner has also filed a copy of the notice dated 31.07.2019 issued under Section 21 of the Arbitration and Conciliation Act, 1996 together with the photo copies of the postal receipts acknowledged by the respondents.



11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first and second respondents.

12. The objection that the present Original Petition is liable to be dismissed as there is no notice under Section 21 of the Arbitration and Conciliation Act, 1996 is over ruled and is answered in favour of the petitioner as a notice was issued under Section 21 of the Arbitration and Conciliation Act, 1996 on 31.07.2019. By the aforesaid notice, the petitioner had asked the respondents to consent for appointment of Mr.N.Muthukumaran, Advocate as a Sole Arbitrator to resolve the dispute.

13. It is, pursuant to the above, the Arbitrator had entered appearance and had passed the Award on 24.07.2020 in C.P.(NOFL)No.3 of 2019.

14. Since the Award has been now set aside, there is no impediment for appointing an Arbitrator to resolve the *inter se* dispute between the petitioner and the first respondent alone.

15. Under these circumstances, Court is inclined to appoint **Mr.C.P.Sivamohan, Advocate, Enrollment No.103/1984, having Office at**



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41, Law Chambers, 2nd Floor, High Court Buildings, Madras High Court,

Chennai - 600 104, (Mobile No.87544 19822), as the Sole Arbitrator to enter

reference to resolve the dispute between the parties strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

16. 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.

17. 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.



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18. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

19. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs both under Section 16, Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

20. All the issues are left open to be canvassed/to be decided before the learned Arbitrator including the jurisdiction of the learned Arbitrator to adjudicate the dispute purportedly, which is time barred.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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