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Arb.O.P.(Com.Div.) No.496 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.496 of 2022

Green Malabar Finance Ventures Limited
rep. by its Authorised Signatory
K.R.Vijay

... Petitioner

Versus

1.S.Peter

2.Sundarajan (guarantor)

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator under Clause 16 xv of the Loan Agreement dated 11.10.2019 of the Loan Agreement to adjudicate the dispute between the parties.

For Petitioner : Mr.R.Dinesh Kumar

For Respondents : Mr.Vigneswaran for R1
R2-dismissed



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ORDER

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2.The petitioner claims that they have entered into a Loan Agreement with the respondents on 11.10.2019. Under the Loan Agreement, the petitioner claims that the respondents have availed a loan from the petitioner. The petitioner also claims that the cheques issued by the respondents have been returned dis-honoured. The petitioner has also lodged a criminal complaint under Section 138 of the Negotiable Instruments Act against the respondents in respect of the dis-honoured cheques. A Statement of account has also been filed by the petitioner, which is dated 15.02.2022. As seen from the statement of accounts, certain sums of money are due and payable by the respondents to the petitioner.

3.It is the contention of the first respondent that no money was borrowed from the petitioner by the first respondent. They have also contended that they never issued the cheques to the petitioner as claimed in



the petition towards repayment of the loan. They have categorically stated that they are not liable to pay any amount to the petitioner.

4.Both the petitioner as well as the respondents have filed statement of accounts. As seen from one statement of account as well as the Bank Statement, certain sums of money seem to have been paid by the petitioner, which has been credited into the Bank account of the first respondent. However, the same is disputed by the first respondent, who has also produced statement of accounts disputing the cheques of the petitioner. The said dispute cannot be adjudicated by this Court in a petition filed under Section 11 of the Arbitration and Conciliation Act, which can be adjudicated only by the Arbitrator, based on the oral and documentary evidence let in by both the parties to the dispute.

5.There is a valid Arbitration Clause available in the Loan Agreement dated 11.10.2019, which is the subject matter of the dispute between the petitioner and the respondents, which is extracted hereunder:



'16.Miscellaneous

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...
(xv) *Arbitration: In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding, the real meaning or purpose hereof ("Dispute"), such dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or re-enactment thereof by a single arbitrator to be appointed by the lender. The venue of arbitration shall be at as decided by the lender and the Arbitration shall be conducted in English language.'*

6.The petitioner has also invoked Arbitration in accordance with the aforementioned Arbitration clause by issuing notice to the respondents on 23.11.2021. The said notice has also been received by the respondents. But no reply was sent to the petitioner. In view of the existence of the Arbitration clause available in the Loan Agreement dated 11.10.2019, which is the subject matter of the dispute and there is no consensus between the parties with regard to the name of the Arbitrator, this Court has to



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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 Mr.A.J.Jawad, Advocate, having Office at No.5/1, Jagajeevan Ram Avenue, East Coast Road, Injambakkam, Chennai - 600 115 (Mobile 9840087114) as the Sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the Loan Agreement dated 11.10.2019, on merits and in accordance with law.

(b)The Arbitrator shall be paid his remuneration / fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.

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



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ABDUL QUDDHOSE, J.

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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.

01.09.2023

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