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Arb. O.P(Com.Div). No.610 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.610 of 2022

Shriram Finance Limited,
Registered Office at
123, Angappa Naicken Street,
Chennai – 600 001,
and one of its branch office at
No.13, 3rd Floor, Meenakshi Towers,
Opposite Ramakrishnan School Ground
G.N.Shetty Road, Rajamannar Street,
T.Nagar, Chennai – 600 017
Land Mark – (Ramakrishna School Ground)
Represented by its Senior Manager
Mathew Arun

... Petitioner

[Amended as per order dated 30.01.2023
in A.No. 248 of 2023]

Vs.

1.Bhomia Buttons Private Limited,
43 KM Stone Bahadurgarh Jhajjar,
Haryana, 124 507.

2.Archana Jain
3.Pratik Jain
4.Sandeep Jain

... Respondents



PRAYER : Original Petition is filed under Section 11(6), 14(1)(b) & 15(2) of the Arbitration and Conciliation Act, 1996, praying to pass an order to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 25.01.2019 in respect of contract bearing No.RSSDLTF1901300009.

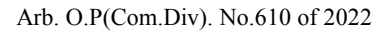
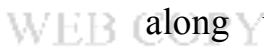
For Petitioner : Ms.M.Nagalakshmi

For Respondents : No Appearance

ORDER

This petition has been filed under Section 11(6), 14(1)(b) & 15(2) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 25.01.2019 in respect of contract bearing No.RSSDLTF1901300009.

2.Learned counsel appearing for the petitioner would submit that the petitioner is rendering financial assistance for its customers by entering into a loan agreement. The respondents approached the petitioner for a loan facility for a sum of Rs.20,00,000/-. After accepting the terms and conditions of the



3.He would further submit that since present dispute arising out of the loan agreement dated 25.01.2019 entered between the petitioner and the respondents and in terms of Clause 18 of the said agreement, the present dispute is arbitrable, the petitioner appointed one Mr.S.Saravanan, as Sole Arbitrator and sent a reference letter dated to the respondents on 20.01.2020. The learned Arbitrator also issued notice dated 29.01.2020 to both the parties, for which the respondent filed their objections and filed application under Section 13 of the Arbitration and Conciliation Act. The said application filed by the respondents came to be dismissed. However, in the meantime, the learned



Arbitrator recused himself from any further proceedings in the arbitration case due to personal reasons by communication dated 23.08.2021. Hence, the petitioner approached this Court praying to appoint a neutral and sole arbitrator.

4.Though notice served on the respondents and their names are printed in the causelist, none appeared on behalf of them, which shows that the respondents are not interested in contesting the case.

5.For better appreciation, Clause 18 of the Loan Agreement dated 25.01.2019, is reproduced hereunder:

“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-enactment for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender. The applicable law shall be Indian laws. In the event of 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 proceedings 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 Party/ies, in accordance with the Award passed by the Arbitrator.

c) The venue of Arbitration shall be as specified in Schedule I hereto and the proceedings shall be conducted in English languages.

d) The Borrower and Guarantor hereby agree and confirm that the Lender shall be permitted to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 and any amendments thereto in order to recover its dues under this Agreement from the Borrower/Guarantor.”

6.In view of the above submissions and a perusal of Clause 18 of the Loan Agreement dated 25.01.2019, it is clear that the present dispute is arbitable 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.



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i) Accordingly, **Mr.R.Umashankar, Advocate, residing at New No.58, Old No.35, Abraham Street, Mylapore, Chennai – 600004, (Contact No.9444010639),** is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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 without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondent/s herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent/s herein.



Arb. O.P(Com.Div). No.610 of 2022

WEB COPY

7.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 respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

13.04.2023

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Arb. O.P(Com.Div). No.610 of 2022

KRISHNAN RAMASAMY. J.,
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13.04.2023