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Arb. O.P(Com.Div). No.620 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.620 of 2022
and O.A.No.705 of 2022

Tata Capital Financial Services Limited,
Represented herein by its: Authorised Representative,
1st Floor, Centennial Square, 6A, Dr Ambedkar Salai,
Kodambakkam, Chennai – 600 024
having its registered office at:
Tower A, 1101 Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013.

... Petitioner

Vs.

1. Aditya Steel Rolling Mill Private Limited,
Having its registered office at:
Opp. Pendurthi Railway Station, Pendurthi,
Vishakapatnam – 530 016.
And also at:
Door No: 9-1-252 & Door No.9-1-252/3,
Flat No.302, 2nd Floor, Balaji Towers,
Asil Metta Junction, Rama Talkie Road,
Vishakhapatnam -530 003.

2. Manju Devi Khemka,

3. Suresh Kumar Khemka

4. Pradeep Kumar Khemka

5. Abhimanyu Khemka

... Respondents



PRAYER : Original Petition is filed under Section 11(4) 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 Arbitration Agreement i.e. Loan cum Guarantee Agreement (Channel Finance) dated 28th August 2020 read with Master Terms and Conditions dated 31st December 2018 bearing Reg No.BBE-3-10160-2018 and to direct the respondent to pay the costs.

For Petitioner	: Mr.Vijay R.Sekar
For R1	: Mr.S.Aravindhan for M/s.Fox Mandal and Associates
For R2 to R5	: Ms.R.Mithra

ORDER

This petition has been filed under Section 11(4) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Arbitration Agreement i.e. Loan cum Guarantee Agreement (Channel Finance) dated 28th August 2020 read with Master Terms and Conditions dated 31st December 2018 bearing Reg No.BBE-3-10160-2018 and to direct the respondents to pay the costs.



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2.Learned counsel appearing for the petitioner as well as the respondents would submit that the present dispute is arising out of the Loan cum Guarantee Agreement (Channel Finance) dated 28.08.2020 read with Master Terms and Conditions dated 31.12.2018 bearing Reg No.BBE-3-10160-2018 and in terms of Clause 12 of the said agreement, the present dispute is arbitrable and they prayed to appoint an arbitrator.

3.For better appreciation, Clause 12 of the Loan cum Guarantee Agreement (Channel Finance) dated 28.08.2020 read with Master Terms and Conditions dated 31.12.2018 bearing Reg No.BBE-3-10160-2018, is extracted hereunder:

“12.If any dispute, difference or claim arises between any of the obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No.17 of Annexure 1 hereto, in accordance with the



Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligor.”

4.Considering the submissions made by the learned counsel appearing for the petitioner as well as the respondents and in view of the fact that the present dispute is arising out of the Loan cum Guarantee Agreement (Channel Finance) dated 28.08.2020 read with Master Terms and Conditions dated 31.12.2018 bearing Reg No.BBE-3-10160-2018 and the same is arbitrable under Clause 12 of the said agreement, this Court is inclined to appoint a sole Arbitrator and pass the following orders:

i) Accordingly, **The Hon'ble Mr.Justice M.Vijayaraghavan (Retd), residing at Door No.2/15, Dr.T.V.Naidu Road, Flat No.2B, Abirami Foliage, Chetpet, Chennai, (Phone No.9003268968),** 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



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Arb. O.P(Com.Div). No.620 of 2022

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 respondents herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondents herein.

v) The interim order already granted by this Court vide order dated 09.11.2022, in O.A.No.705 of 2022, shall continue till the completion of the arbitration proceedings, unless and otherwise the parties file necessary application to vacate the interim injunction and if there is any order from the learned Arbitrator.



Arb. O.P(Com.Div). No.620 of 2022

5.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 respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator. Connected, Original Application is also disposed of.

12.06.2023

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KRISHNAN RAMASAMY. J.,

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