



WEB COPY



Arb.O.P(Com.Div.)No.539 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.539 of 2023

M/s.Tata Capital Financial Services Limited,
having its registered office at 11th Floor, Tower-A,
Peninsula Business Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

Having one its branch office at:
1st Floor, Centennial Square, No.6,
Dr Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

Represented by its Authorized Signatory/Power of Attorney
Mr.Noyal James.

... Petitioner

Vs.

M/s.Jeevanshree Polypacks,
Represented by its Partners,
Mr.Himmat Bafna & Mr.Bafna Shreyans
Plot No.F-12/P, ID Kukatpally, Gandhi Nagar,
Hyderabad, 500 072, Telangana.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon the differences and disputes between the parties under the Term Loan Agreement dated 22.01.2021.



Arb.O.P(Com.Div.)No.539 of 2023

For Petitioner : Mr.M.Arunachalam

For Respondent : No appearance

ORDER

Notice on the partnership firm has been served. Notice on the second partner namely Mr.Bafna Shreyans has also been served, although notice on the other partner namely Mr.Himmat Bafna has been returned. Considering the fact that the notice has been served on the partnership firm, it is deemed that there is a service of notice on the respondent partnership firm represented by two of its partner mentioned above.

2. Despite notice being served on the partnership firm, there is no representation on behalf of the respondent.

3. This petition has been filed for appointing an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 03.07.2023. In terms of the aforesaid notice, the petitioner has stated as follows:-



WEB COPY

“14.In the event, you Nos.1 to 3 fail to comply with your payment obligations, it shall be presumed that disputed, differences, claims etc. have arisen between you and TCFSL and this notice may be treated as notice invoking arbitration under Clause 24 of the Master Terms and Conditions Agreement dated 31.12.2018 read with Clause 12 of the Agreement for Term Loan dated 22.01.2021.”

4. The Contract Agreement dated 22.01.2021 contemplates resolution of dispute through Arbitration. Arbitration Clause 12 and 13 in the Contract Agreement dated 22.01.2021 reads as under:-

“12.Arbitration:

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.18 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 obligors.

13.Jurisdiction.

Subject to Clause 12 above, the Parties hereto agree that all disputes arising out of and/or in relation to this Agreement, shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No.19 of Annexure 1 hereto. The Lender may, however, in its absolute discretion commence any legal



WEB COPY

action or proceedings arising out of this Agreement in any other Court, tribunal or other appropriate forum and the Obligors hereby consents to that jurisdiction.”

5. The Master terms of the condition dated 31.12.2018, attached to the Agreement also contemplates a similar Clause which reads as under:-

“24.Arbitration.

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 T&Cs 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 in the Facility Documents 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. The cost of arbitration shall be borne by the borrower.”

6. Considering the fact that the dispute is arbitrable and considering the fact that the petitioner has invoked Section 21 of the Arbitration and Conciliation Act, 1996 on 03.07.2023 and considering the fact that there is no representation on behalf of the respondent either in person or through counsel, it is deemed that the respondent has forfeited the rights under the Contract



Arb.O.P(Com.Div.)No.539 of 2023

Agreement dated 22.01.2021. The Court is therefore inclined to hold that the

respondent has forfeited the rights to appoint an arbitrator.

7. Therefore, **Mrs.R.RATHNA THARA, Advocate, (Mobile No.98404 51276) having Office at No.9, Siddhi Vinayakar Koil Street, T.Nagar, Chennai – 600 017,** is appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

8. 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.

9. 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



Arb.O.P(Com.Div.)No.539 of 2023

shall be borne by the parties equally. In case, the respondent remains *ex parte*,

the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

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

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

07.12.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

jas



WEB COPY



Arb.O.P(Com.Div.)No.539 of 2023

C.SARAVANAN, J.

jas

Arb.O.P.(Com.Div.).No.539 of 2023

07.12.2023