



Arb.O.P(Com.Div.)No.540 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.540 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.

1.M/s.Sri Amman Auto Traders,
Represented by its Partners,
Mr.A.Velu and Mrs.V.Thilagam,
No.4B/8, Kalarampatty Main Road,
Salem, Tamil Nadu – 636 015.

2.Mr.A.Velu

3.Mrs.V.Thilagam

... Respondents



Arb.O.P(Com.Div.)No.540 of 2023

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 Loan cum Guarantee (Channel Finance) Agreement dated 28.02.2022.

For Petitioner : Mr.M.Arunachalam

ORDER

This petition has been filed by the petitioner for appointing an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Despite service of notice on the respondents and name being printed in the Cause List today, there is no representation on behalf of the respondents. No vakalat has also been filed on behalf of the respondents.

3. The petitioner has invoked the Arbitration Clause under the Loan cum Guarantee (Channel Finance) Agreement dated 28.02.2022. Relevant Clause reads as under:-

“12.Arbitration:

If any dispute, difference or claim arises between any of the Obligor 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 these T&Cs or alleged breach of the Facility



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Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No.17 of Annexure 1 hereto of the Agreement. The party invoking the arbitration (“Claimant”) shall address a notice to the other party (“Respondent”) suggesting the name of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience.

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the claimant within a period of ten (10) days from the date of notice (“Notice Period”); or

(ii) Convey Objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the parties.

In the event, the respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the obligor/s.

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.18 of Annexure 1 hereto. The Lender



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may, however, in its absolute discretion commence any legal 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.”

4. The jurisdictional place of Arbitration has been given is Chennai in the schedule to the aforesaid Agreement.

5. The petitioner has also issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 14.07.2023.

6. Despite the same, the respondents have not come forward to name an Arbitrator. On the other hand, the respondents by a reply letter dated 26.11.2022 through their counsel has agreed to settle the amount. Dispute being arbitrable, Court is inclined to conclude that the respondents have forfeited their rights to participate in the decision to appoint an Arbitrator in accordance with the above mentioned Clause in Agreement dated 28.02.2022.

7. Considering the above, **Mr.K.N.Pandian, Advocate, (En.No.801 of 80) having office at No.476, New Additional Law Chambers, V Floor, High Court, Chennai (Mobile No.9444294525),** is appointed as an arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the



Arb.O.P(Com.Div.)No.540 of 2023

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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 shall be borne by the parties equally. In case, the respondents remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.



Arb.O.P(Com.Div.)No.540 of 2023

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 respondents 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

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C.SARAVANAN, J.



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Arb.O.P(Com.Div.)No.540 of 2023

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Arb.O.P.(Com.Div.).No.540 of 2023

07.12.2023