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Arb.O.P (Com.Div.) No.690 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.690 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.Talwar Mobiles Private Limited,
CIN: U50100TG1998PTC029329,
Ground Floor, Plot No.160(44/45),
Patny Plaza, Sardar Patel Road,
Secundrabad, Hyderabad 500 003.

2.Saral Talwar

3.Sunil Talwar

4.Bharthepudi Srinivas

... Respondents



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Arbitration Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 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 dated 3rd April 2021 and to direct the respondent to pay the costs.

For Petitioner : Mr.Vijay R.Sekar
For Respondent : No appearance

ORDER

This Arbitration Original Petition was filed 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 dated 3rd April 2021.

2. The learned counsel for the petitioner would submit that by virtue of the Loan cum Guarantee agreement dated 03.04.2021, the respondents had availed financial facilities from the petitioner. However, the respondents had committed default in repayment of the said loan. With regard to the said due, the petitioner had send a notice dated 11.03.2022. However, in spite of the said notice, the respondent had neither responded nor settled the dues. Thereafter, though the petitioner sent a notice dated



25.07.2022 under Section 21 of the Act, the respondent had not responded.

Therefore, with no other option, the petitioner had approached this Court for the appointment of Arbitrator.

3. By referring clause 12 of the said loan agreement, the learned counsel for the petitioner would submit that the present dispute can be referred to Arbitration. The Clause 12 of the said loan agreement reads as follows:

“12. If any dispute, difference or claim arises between any of the obligators 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 as Sole Arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all the parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the obligators.”

4. After filing of this petition, notice was ordered to the respondent



and the name of the respondent was also printed in the cause list. However, when the matter was taken up for hearing today, none appeared on behalf of the respondent, which shows that the respondent is not interested in contesting this matter. Therefore, this Court proceeds to pass orders.

5. Upon hearing the learned counsel for the petitioner and perusing the materials available on record, this Court is satisfied that the present dispute is arising out of the loan agreement dated 03.04.2021 and the same is arbitrable in terms of Clause 12 of the said loan agreement. Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes between the parties.

6. Accordingly, this Court feels it appropriate to pass the following order:

i) The Hon'ble Mr.Justice K.Mohan Ram, Former Judge, Madras High Court, residing at "ISHANA", Plot No.15B, Radiant Avenue, 5th Street, VGP Golden Beach Layout, Injambakkam, ECR, Chennai -11. (Contact No.9444464646), is appointed as sole 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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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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

7. With the above direction, this Arbitration Original Petition is allowed.

15.06.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
sd/suk

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