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Arb. O.P(Com.Div). No.673 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.673 of 2022

M/s.Singhvi Finlease (India) Ltd.,
Represented by Director Vaibhav Singhvi,
No.353, Mint Street,
Sowcarpet,
Chennai 600 079.

... Petitioner

Vs.

1.K.Subramani

2.S.Prakash

3.R.Ramamoorthy

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to decide the dispute between the petitioner and respondent in accordance with Article 20 of the Hypothecation Agreement dated 28.03.2019.

For Petitioner : Mr.M.Aravind Subramaniam

For Respondent : No Appearance



ORDER

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This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to decide the dispute between the petitioner and respondent in accordance with Article 20 of the Hypothecation Agreement dated 28.03.2019.

2.Learned counsel appearing for the petitioner would submit that the petitioner is a Non-Banking Finance Company registered under the provisions of the Companies Act 1956 and carries business of extending various finance facilities. While so, the 1st respondent approached the petitioner and requested to avail a loan of Rs.16,80,000/-. The said proposal was accepted by both the parties and the petitioner as lender, the 1st respondent as borrower and the respondents 2 and 3 as guarantors had entered into a Hypothecation Loan Agreement dated 28.03.2019 for the purchase of vehicle namely TATA Tipper LPK 2518 TC bearing Engine No.03261G637641 Chassis No.MAT448502G3G17633 and Registration No. TN 73 L 8170.

3.Learned counsel would further submit that under the said loan agreement, the petitioner has disbursed the loan amount of Rs.12,00,000/- to the 1st respondent which was repayable with finance charges of Rs.4,80,000/-



totaling Rs.16,80,000/- in 30 monthly installments. A sum of Rs.56,000/- per month is payable for 30 months. The first installment commenced on 28.04.2019 and the last installment ends on 28.09.2021. However, contrary to the said agreement, the 1st respondent committed default from 17th installment. Thereafter, the petitioner made several demand over phone and several personal visits to the 1st respondent's place through his agents to recover the dues. After which, the 1st respondent had drawn a cheque for a sum of Rs.2,80,000/- to clear the existing dues along with interest. However, the cheque was dishonored for the reason 'insufficient funds'. As on 27.07.2021, a sum of Rs.14,60,540/- is due and payable by the 1st respondent. Therefore, the petitioner by letter dated 27.07.2022, called upon the respondent to appoint the Arbitrator by invoking the Article 20 of the Hypothecation Loan Agreement. The said notice was received by the 1st respondent on 04.08.2022, but, till date there was no reply from the 1st respondent. Hence, the petitioner has come up with the present petition.

4.Though notice served and the name of the respondents are printed in the cause lists, none appeared on behalf of the respondents. Therefore, this Court proceeds to pass the following orders:



5. Upon hearing, it is seen that the petitioner had disbursed the loan amount of Rs.12,00,000/- to the 1st respondent which was repayable with finance charges of Rs.4,80,000/- totaling Rs.16,80,000/- in 30 monthly installments for the purchase of commercial vehicle. The 1st respondent has committed default from the 17th installment. Even after several demands made by the petitioner, the 1st respondent has not come forward to settle the dues. Even for the notice sent by the petitioner calling upon the 1st respondent to appoint the Arbitrator, there was no reply from the 1st respondent. Therefore, he seeks to appoint a Sole Arbitrator as per Article 20 of the Hypothecation loan agreement to resolve the disputes.

6. For better appreciation, Article 20 of the Hypothecation Loan Agreement dated 28.03.2019, is reproduced hereunder:

“20.1 All disputes, difference and / or claim 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 statutory amendments thereof and shall be referred to the sole arbitrator of an Arbitrator nominated by the lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this agreement.



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It is a term of this agreement that in the events of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

20.2 The venue of arbitration proceedings shall be at

20.3 The arbitrator so appointed herein above, shall also be entitled to pass an award on the hypothecated assets and also on any other securities furnished by or on behalf of the Borrower.”

7. In view of the above submissions and a perusal of Article 20 of the Hypothecation Loan Agreement dated 28.03.2019, 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.

8. Accordingly, Mr. Naveen Kumar Murthi, Advocate, residing at No.S2, 337 Linghi Chetty Street, Chennai – 600 001, (Mobile No.9884840424), is appointed as the Arbitrator to enter upon reference and adjudicate the disputes



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inter se the parties. 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. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

9.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.

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KRISHNAN RAMASAMY. J.,
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