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Arb.O.P (Com.Div.) No.217 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.217 of 2024

M/s.TVS Credit Services Ltd.,
Having its Registered Office at
Chaitanya No.12, Khader Nawaz Khan Road,
Nungambakkam, Chennai 600 006,
Corp Office at
No.29, Jayalakshmi Estate, Third Floor,
Haddows Road, Nungambakkam,
Chennai, Tamil Nadu 600 006,
Represented by its Authorised Signatory/Power of Attorney,
Ms.Chithra R

... Petitioner

Vs.

1.M.s,MVR Gas,
Rep by its Proprietor Mr.B.V.Sadanand,
No.801, 9th Main 3rd Block,
Koramangala,
Bangalore 560 034.

2.B.V.Sadanand

... Respondents



Arb.O.P (Com.Div.) No.217 of 2024

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said Agreement dated 30.04.2019 in respect of Contract Nos.KA7011MS0000147.

For Petitioners : Mr.Arunachalam

For respondents : No appearance

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents.

2. In the present case, notice was served and the name of the respondents were also printed in the cause list. However, there is no representation on behalf of the respondent, which shows that they have no interest in contesting this matter. Therefore, this Court is inclined to hear the petitioner and proceed to pass the present order.

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3. The learned counsel for the petitioner would submit that the petitioner had lent money to the respondents by virtue of Loan Agreement dated 30.04.2019. Thereafter, due to the default in repayment of said amount, the petitioner had issued a Loan Recall notice dated 24.11.2021 calling upon the respondents to pay the entire outstanding due amount of a sum of Rs.19,96,869/-. However, the respondents had neither replied for the said notice nor paid the due amount. Therefore, the petitioner had invoked Arbitration under Clause 25 of the Loan Agreement and unilaterally appointed an Arbitrator as per the provisions of the said Clause and also obtained an ex parte award dated 27.05.2022.

4. Further, he would submit that even after the passing of award, the respondents had not come forward to make payment and now, the respondents are liable to pay a sum of Rs.22,38,196.08/-. Therefore, the petitioner has filed an Execution Petition, however, the said petition was



rejected on the ground of unilateral appointment of Arbitrator. Hence, this petition has been filed for appointment of a Sole Arbitrator.

5. Heard the learned counsel for the petitioner and also perused the materials available on record.

6. In the present case, it appears that the dispute between the parties is arising out of the Loan Agreement dated 30.04.2019. Upon perusal of the Agreement, it is clear that the dispute among the parties can be resolved by virtue of Arbitration as per Clause 25 of the said Agreement, which reads as follows:

“25. All disputes, differences and/or claims 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 and or any statutory amendments thereof and shall be referred to the sole arbitration of an arbitrator nominated by the Lender. The award given by such arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or bring unable or unwilling to act as arbitrator for any reason, the Lender, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the



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reference from the stage it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai. The Borrower agrees to a fast track arbitration to be disposed within 90 days from the date of reference.”

7. Considering the submissions made by the learned counsel for the petitioner and also in view of the fact that the dispute between the petitioner and the respondents arose out of the Loan Agreement dated 30.04.2019 and the same can be resolved by virtue of Clause 25 of the said Agreement, this Court is inclined to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

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

i) Mr.R.Prathap Kumar, Advocate, Singapore Plaza, F-6, Second Floor, Linghi Chetty Street, Chennai 600 001, Mobile No.94431 19818, 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 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



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

9. This Arbitration 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.

01.08.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 09.08.2024

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KRISHNAN RAMASAMY.J.,
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