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Arb.OP(Com.Div.)No.376 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2024

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Arb.OP(Com.Div.) No.376 of 2024

M/s.Cholamandalam Investment and Finance

Company Limited,

“Chola Crest”, C 54 & 5, Super B-4,

Thiru Vi Ka Industrial Estate,

Guindy, Chennai – 600 032.

Rep by its Authorised Signatory.

... Petitioner

Vs.

1. Basruddin Khan

2. Rahila B Khan

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking to appoint a Sole Arbitrator to adjudicate the dispute arising under loan agreement No.XVFPHBL00004438424 dated 03.12.2021 between the petitioner and the respondents as per the loan agreement No. XVFPHBL00004438424 dated 03.12.2021.

For Petitioner : Mr.D.Pradeep Kumar

For Respondents : No appearance



ORDER

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This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole arbitrator to adjudicate the dispute arising under loan agreement No. XVFPHBL00004438424 dated 03.12.2021 between the petitioner and the respondents.

2. The petitioner states that the respondents approached the petitioner for loan and assured due and proper repayment of the same. Accordingly, they entered into loan agreement dated 03.12.2021. The petitioner cites the arbitration clause in the loan agreement dated 03.12.2021 and submits that the dispute which has arisen between the petitioner and the respondents herein is liable to be referred to arbitration in terms thereof. The relevant clause in the agreement deed is set out below:-

“29. ARBITRATION : 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 Arbitration of an Arbitrator nominated by the Company. 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 being unable or unwilling to act as arbitrator for any reason, the Company, 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 reference from the stage left by his predecessor. The venue of arbitration proceedings shall be at Chennai or such other place/location/city which the Company at its discretion may decide from time to time ."

3. The petitioner also points out that under the said agreement, arbitration proceedings were initiated and the respondents filed application under Section 16(2) of the Arbitration and Conciliation Act, raising objection on the ground of unilateral appointment of sole arbitrator. Therefore, the sole arbitrator withdrew himself from the arbitration proceedings.

4. Notice was ordered on the respondents on 25.09.2024. Though notices sent to the respondents were returned with endorsement "refused to receive", it can be treated as sufficient service of notice. Therefore, there is no impediment to proceed with the matter.

5. On perusal of clause 29 of the agreement deed dated 03.12.2021, it is evident that the disputes are required to be resolved through arbitration. The petitioner has also duly invoked the arbitration clause. In view of the failure of the



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respondent to respond thereto, or took consent to the nominee proposed by the petitioner, the Sole Arbitrator is required to be appointed in accordance with Section 11 of the Arbitration and Conciliation Act.

6. Therefore, this Court is inclined to appoint an arbitrator from Chennai. Accordingly, this petition is allowed by appointing Mr.M.Navin Kumar Murthy, Advocate having office address – T6, 3rd Floor, Singapore Plaza, Linghi Chetty Street, Chennai- 600 001 (Mobile: 9884740424) as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law. It is open to the Sole Arbitrator to fix his fees and expenses in relation to the arbitral proceedings.

17.10.2024
(7/13)

Neutral citation: Yes/no
Index : Yes/No
Speaking/Non Speaking

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G.K.ILANTHIRAIYAN, J.

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