



Arb. O.P. (Com. Div) No.391 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

Arb. O.P. (Com. Div) No.391 of 2024

M/s.Cholamandalam Investment and Finance Company Limited,
"Chola Crest", C54 & 55, Super B-4,
Thiru Vi Ka Industrial Estate,
Represented by its Authorized Signatory. ... Petitioner

Vs.

1. M/s.Tiwam Stainless Tubes Pvt. Ltd.,
No.54, O Road, Belgachia, P S Liluah,
Howrah, West Bengal - 711 108.

Also at:

No.22/4, Haora (M. Corp.),
Netajigath, Haora, Howrah,
West Bengal - 711 108.

2. Ayodhya Tiwary
3. Jitendra Tiwary
4. Pintu Tiwary
5. Annapurna Tiwary

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of Invoice Discounting Agreement dated 22.06.2022.



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For Petitioner : Mr. D. Pradeep Kumar

For Respondents : No Appearance

ORDER

This petition has been filed seeking appointment of an arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of Invoice Discounting Agreement dated 22.06.2022.

2. The petitioner had entered into Invoice Discounting Agreement dated 22.06.2022 with the respondents, on an approach made by the respondent for availing invoice discounting facility with a limit of Rs.3,00,00,000/- with the petitioner. As per the terms and conditions of the Invoice Discounting Agreement, the facility amount and permitted limit was Rs.3,00,00,000/- and tenure of the facility was for 12 months and credit period was 60 days and the interest / discount rate is 10% and the respondents are also liable to pay penal charges @ 18% in the event of any default. According to the petitioner, the terms were violated by the respondents. Hence, the petitioner is before this Court.



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3. All disputes and difference arising out of the Invoice Discounting Agreement shall be resolved as per clause 27 of the Invoice Discounting Agreement dated 22.06.2022 in accordance with the Arbitration and Conciliation Act 1996, which reads as follows:

"27. ARBITRATION:

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 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 it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai at the Registered Office of the Company which is presently at



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Arb. O.P. (Com. Div) No.391 of 2018

DARE HOUSE, No.2 (old No: 234), NSC BOSE ROAD, PARRYS, CHENNAI-600 001. The Borrower agrees to a fast track arbitration to be disposed of within 90 days from the date of reference"

4. Insofar as the jurisdiction is concerned, it is relevant to extract clause 28 of the agreement hereunder:

" 28. JURISDICTION:

This Agreement has been accepted and executed by the Company at Chennai and all covenants, terms and conditions hereof including payments shall be observed and performed at Chennai and the Borrower specifically agrees, subject to the arbitration clause contained herein, that courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement."

5. Therefore, the petitioner casts notice to invoke clause 27 of the agreement and also suggested two person's names to be appointed as arbitrator to resolve the dispute. However, on receipt of the same, the respondents objected to the arbitrators nominated by the petitioner and



hence, the petitioner was constrained to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996.

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6. In this petition, this Court ordered notice and also permitted to take private notice. On receipt of the private notice, the respondents failed to appear before this Court either through person or through his pleader. Today, the name of the respondents is printed in the cause list and even no one appeared by person or their pleader.

7. Accordingly, this petition is allowed by appointing Mr.S.G.Ramesh Kumar, Advocate (Enrl. No.592/1993) (Mob. No.94440 44031) having address at New No.30, Old No.55, Second main road, R.A. Puram, Chennai - 600 028 as 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. No Costs.

22.10.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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G.K. ILANTHIRAIYAN. J.,

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