IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.478 of 2023

M/s.Dugar Finance & Investments Ltd.,
Rep. by its Authorised Signatory,
Mr.Mahesh Kumar,
"Dugar Towers",
No.34/123 Marshalls Road,
Egmore, Chennai 600 008. ...Petitioner

Vs

1. Mr.Newton Biju Paul Samuel,
2. Mr.N.C.Selva Raj ....Respondents

Prayer:- This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator(s) to decide the disputes and differences between the petitioner and respondent in terms of Hypothecation Loan Agreement No.11599 dated 23.12.2020.

For Petitioner :M/s.L.Angelin Philo
For R1 : Ms.Gopika Nambiar
for Sharath Chandran

ORDER

This Arbitration Original Petition has been filed, under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator(s) to decide the disputes and differences between the petitioner and respondent in terms of Hypothecation Loan Agreement No.11599 dated 23.12.2020.

2. The case of the petitioner is that, the petitioner company as "Lender", the first respondent as "borrower" and the second respondent as a "Guarantor" entered into a Hypothecation Loan Agreement, hereinafter referred as "agreement" vide Doc.No.11599 dated 23.12.2020, for a sum of Rs.7,55,000/-, in which a sum of Rs.5,00,000/- towards finance amount and a sum of Rs.2,55,000/- towards finance charges.

3. The learned counsel for the petitioner submitted that, the first respondent has agreed to pay a sum of Rs.7,55,000/- in 36 instalments at the rate of Rs.21,000/- for 35 months and Rs.20,000/- for one month. However, the first respondent has paid only two instalments out of 36 instalments. Therefore, the petitioner sent a notice to the first respondent on 22.02.2022 for foreclosure of entire loan agreement. Despite the

service of notice on the first respondent, the first respondent has not come forward to settle the amount. Thereafter, the petitioner sent an arbitration notice dated 04.04.2022 for appointment of sole arbitrator. Pursuant to which, the first respondent sent reply notice dated 07.04.2022, in which, the first respondent was not agreeable for the nomination of the arbitrator and the first respondent stated that the unilateral appointment of an arbitrator by one party is illegal and contrary to law in view of the law laid down by the Supreme Court of India in ***Perkins Eastman Architects DPC vs. HSCC (India) Limited*, (Arbitration Application 32 of 2019 dated 26.11.2019).** Thus, the petitioner filed the present O.P., for the purpose of appointment of sole arbitrator in terms of the Arbitration Clause under Article 22 of the loan agreement at 23.12.2020, which reads as follows:

> *"(a) All disputes, differences 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 Managing Director of the Londor. The award given by such an Arbitrator shall be final and binding on the Lender and Borrower to this Agreement.*
> *It is a term of this agreement that in the event of such an arbitrator to whom the matter has been*

originally referred dying or being unable to act for any reason, the Managing Director of the Londor, 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.

(b) The venue of arbitration proceedings shall be at Chennai.

(c) The arbitrator so appointed herein above, shall also be entitled to pass an award on the hypothecated asset and also on any other securities furnished by or on behalf of the Borrower."

4. The learned counsel for the first respondent submitted that the loan agreement filed by the petitioner is clearly fabricated, which is evident from the seal of the Sub-Treasury of Egmore-Nungambakam, dated 14.10.2030. Therefore, she submitted that there is nullity as far as the agreement is concerned. Further, she submitted that this Court may decide the subject matter with regard to the seal affixed on the special adhesive stamp, wherein the date shows as 14.10.2030.

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

6. In the present case, the only contention of the first respondent is that, there was fraud in execution of the loan agreement, wherein the affixed seal stated as 14.10.2030. In reply, the learned counsel for the petitioner submitted that it was an inadvertent error committed by the Treasury.

7. On perusal of the loan agreement, it shows that the borrower/first respondent also signed in the said agreement. If at all any fraud played by the petitioner regarding the inadequate stamp, then both the parties are responsible. At this juncture, the learned counsel for the first respondent submitted that the issue can be decided by the sole arbitrator and requested for appointment of sole arbitrator.

8. In view of the above submissions, this Court is inclined to appoint a sole arbitrator to resolve all the disputes including the

inadequacy or fraud alleged to have been played by the petitioner in execution of the loan agreement and the same can be decided by the sole arbitrator appointed by this Court.

9. Accordingly, this Arbitration Original Petition is disposed of, with the following directions:-

(a) **Mr.Naveen Kumar Murthi, Advocate, Cell No.9884740424, No.27(18/1), Janakirman Colony, Arumbakkam, Chennai 600 106**, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said loan agreement.

(b) The Sole Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order, within a period of six months from the date of receipt of a copy of this order.

(c) The Sole Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both 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 is at liberty to recover the same directly from the Respondent.

03.04.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation:Yes/No
jd

KRISHNAN RAMASAMY.J

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