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Arb.O.P(Com.Div.)No.376 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.376 of 2023

Ratnasabapathy Mohan
999, Stonebridge Circle,
Cookeville, Tennessee – 385 011.

... Petitioner

Vs.

1.Go Works Solutions Limited,
Having its office at:
178 Mount Road,
Shakthi Towers, 5th Floor,
Chennai – 600 002.

2.PrabhuramRamanathan
Director,
Go Works Solutions Limited,
Having its office at:
178 Mount Road,
Shakthi Towers, 5th Floor,
Chennai – 600 002

Also residing at:
27 Crestview Drive, Kendall Park,
New Jersey, USA
Also residing at:
No.39/9, Anusakthi Enclave,
Gandhinagar, 2nd Main Road, Adyar, Chennai – 600 020



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3.Rajeshkrishnamoorthy

Director,

Go Works Solutions Limited

Having office at:

178 Mount Road, Shakthi Towers,
5th Floor, Chennai – 2.

4.Priya Suresh

Director,

Go Works Solutions Limited

Having office at:

178 Mount Road, Shakthi Towers,
5th Floor, Chennai – 2.

5.Prema Ramanathan

Director,

Go Works Solutions Limited

Having office at:

178 Mount Road,
Shakthi Towers, 5th Floor,
Chennai – 2

Also residing at:

No.39/9, Anusakthi Enclave,
Gandhinagar, 2nd Main Road,
Adyar, Chennai – 600 020.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an independent and impartial arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Loan Convertible Agreement dated 01.11.2015 and to direct the respondents to pay the cost of this petition.



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For Petitioner : Mr.Rahul Jagannathan
For Respondents : Mr.Ravi Kumar Paul for
M/s.Paul and Paul and
Mr.J.Hudson Samuel

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ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996. It has been filed on the strength of the arbitration Clause under a convertible loan agreement signed between the petitioner and the first respondent represented by the second and third respondents.

2. The said convertible loan agreement dated 01.11.2015 was guaranteed by guarantor named Mrs.Priya Venkatesh who is not a party to the proceedings. As per the aforesaid agreement, the petitioner appears to have invested a sum of Rs.1,05,00,000/- with the first respondent company which was repayable in one years time together with interest at 18%.

3. It is the case of the petitioner is that the aforesaid amount together with interest at 18% has not been repaid by the first respondent represented by the second and third respondents. Hence, this Original Petition has been filed.



4. That apart, it is submitted that the other respondents who are the

Director of the petitioner have also given a promissory note acknowledging the receipt of Rs.1,05,00,000/- under the aforesaid agreement over and above the aforesaid amount of Rs.1,05,00,000/-. The petitioner has lent a further sum of Rs.1,07,00,000/- in three installments of Rs.67,00,000/-, Rs.28,00,000/- and Rs.12,00,000/- which has been acknowledged by the second and third respondents who are the Directors of the first respondent.

5. It is further submitted that the petitioner has issued a legal notice dated 05.05.2022, which was replied by the respondents through their counsel on 20.05.2022 and another reply dated 24.05.2022 and therefore the petitioner has invoked the Section 21 of the Arbitration and Conciliation Act on 28.09.2022, which there has been no response till the date of the filing of the Original Petition.

6. Defending the proceedings on behalf of the fourth and fifth respondents, the learned Senior counsel for the respondents submits that the petitioner had instituted a suit before the Chancery Court, Putnam County, Tennessee, in Docket No.2020-104 in respect of all the amounts covered by the convertible loan agreement dated 01.11.2015 and the amounts allegedly due



and acknowledged by the second and third respondents herein by a letter dated

01.12.2018 for the aforesaid amount of Rs.1,07,00,000/- [Rs.67,00,000+ Rs.28,00,000 + and Rs.12,00,000/-] and that the suit was also decreed by the said Court on 28.05.2021.

7. It is therefore submitted that the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is not therefore maintainable. That apart, it is submitted that there is a suppression of fact and therefore on this count also this Original Petition is liable to be dismissed.

8. By way of rejoinder, the learned counsel for the petitioner submits that although the suit was filed in Docket No.2020-104 before the Chancery Court for Putnam County, Tennessee by the petitioner. The petitioner will have difficulty in enforcing the judgment in terms of Section 13 of the CPC.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and also perused the counter filed by the fourth respondent on behalf of the second, fourth and fifth respondents.



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10. The first respondent has closed its operation and therefore notice that was taken out on the first respondent has remained unserved. The second respondent has not entered appearance, although an undertaking was also given on behalf of the second respondent that a vakalat will be filed. The fourth respondent has filed a counter on behalf of the fourth and fifth respondents.

11. Be that as it may, the present Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 is not maintainable, as the petitioner has already work out the remedy before the Chancery Court for Putnam County, Tennessee in Docket No.2020-104 and has secured an exparte judgment from the said court on 28.05.2021. It is open for the petitioner to approach the Court for recognizing and enforcing the decree against the defendants therein who are also the respondents herein. Only in the event of the decree being declared as unenforceable, the parties can be put to the position prior to the aforesaid judgment and decree of the Court dated 28.05.2021.



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12. Since the scope of enquiry under Section 11(6) of the Arbitration and Conciliation Act, 1996 is limited, this Original Petition is not maintainable as of today. The petitioner could not seeks two remedies for the same relief one before this Court by way of a reference before the Arbitrator and before the Chancery Court for Putnam County, Tennessee.

13. Therefore, this Original Petition is dismissed with the above observations.

04.01.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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