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Arb.O.P (Com.Div.) No.553 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P (Com.Div.) No.553 of 2023

IndusInd Bank Ltd.
Rep. By its Authorised Representative
Mr. P.Vignesh Kumar
having its Consumer Finance Division
at No. 116, G.N.Chetty Road
T.Nagar, Chennai – 600017.

...Petitioner

-VS-

1. Mr. Mohamed Ismail.A
2. Mr. Syed Sathakathullah

...Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 appointing a sole arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan Agreement No.TMJ00339L dated 03.12.2020 and for cost of the petition.

For Petitioner : Mr.K.Moorthy

For Respondents : Mr. R.Umashankar
For M/s. Sri and Shankar Associates

ORDER



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This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 appointing a sole arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan Agreement No.TMJ00339L dated 03.12.2020 and for cost of the petition.

2. Heard Mr. K.Moorthy, learned counsel for the petitioner and Mr.R.Umashankar, learned counsel appearing on behalf of the respondents.

3. The learned counsel appearing on behalf of the respondents had contended that the applicant had not issued any Section 21 notice as required under law for commencement of the arbitration proceedings. Without issuance of such Section 21 notice, the application filed by the applicant under Section 11 before this Court is not maintainable.

4. The learned counsel appearing on behalf of the applicant by relying



upon the additional typed-set would contend that Section 21 notice dated 30.12.2022 had been sent to the respondents and also produced the postal receipts dated 03.01.2023 sent to the respondents. He had also produced in the said typed-set a copy of the delivery manifest issued by the postal department, in which the delivery to the respondents had been evidenced.

5. At that juncture, the learned counsel appearing on behalf of the respondents would submit that in the event an Arbitrator is appointed, the issue may be left open for him to raise the same before the learned Arbitrator as the Arbitrator could look into the evidence of service of notice under Section 21 and also adjudicate on the said issue.

6. The liberty sought for by the respondents is granted and they are entitled to raise the very same objection before the Arbitrator and in view of the same, no finding is given as to whether there has been a service of Section 21 notice on the respondents or not.

7. In view of the same, I am inclined to appoint Mr.P.V.Balasubramaniam, Advocate, (Mobile No.9841041888), having



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office at No.III/1, Third Floor, Sai Durbar Appartments, 50, 2nd Main Road, R.A.Puram, Chennai-600028 as Sole Arbitrator to enter upon the dispute between the petitioner and the respondents.

8. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible.

9. Accordingly, this Arbitration Original Petition is ordered.

29.08.2024

Index :Yes/No
Maya



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K.KUMARESH BABU, J.
Maya

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