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Arb.O.P. (Com.Div.) No.551 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.551 of 2023

Indusland Bank Limited,
Rep by its Authorised Representative
Mr.P.Vignesh Kumar
having its Consumer Finance Division at
No.116, G.N.Chetty Road,
T.Nagar,
Chennai – 600 017.

.. Petitioner

Vs.

1.Mr.Nanjappa B M

2.Mr.Ashok B N

.. Respondents

Prayer: Original Petition is filed under Section 11(6)(a)(c) of the Arbitration and Conciliation (Amendment) Act, 2015 read with Rule 2 of the appointment of the Arbitrators of Madras High Court Scheme, 1996, praying to appoint a sole Arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan agreement No.KYY00962T dated 08.01.2019.



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For Petitioner : M/s.S.R.Subashini for
M/s.K.Moorthy

For Respondents : M/s.N.Nandhini

ORDER

This petition has been filed under Section 11(6)(a)(c) of the Arbitration and Conciliation (Amendment) Act, 2015 read with Rule 2 of the appointment of the Arbitrators of Madras High Court Scheme, 1996, praying to appoint a sole Arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan agreement No.KYY00962T dated 08.01.2019.

2. The learned counsel for the respondents seeks time to file a counter. Already two adjournments have been granted earlier for facilitating the respondents to file a counter.

3. It is noticed that the petitioner herein is advanced a loan to the respondents under a loan agreement dated 08.01.2019. The said agreement contemplates a mechanism for resolving the dispute through Arbitrator. Relevant Clause reads as under:-



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“23.1. All disputes, differences and/or claim arising out of or touching upon 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 Lender. The award given by such an arbitrator shall be final and binding on all the parties to this agreement.

23.2. Dispute for the purpose of arbitration includes default committed by the Borrower as per Clause 14 of 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 resigns or dies or being unable to act for any reason, the Lender, 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.

23.3. The seat/place/venue of Arbitration proceedings shall be at Chennai and the language shall be in English.”

4. It appears that the respondents who had taken loan from the petitioner as defaulted in making re-payment of the loan as per the Schedule attached to the aforesaid loan agreement dated 08.02.2019. The petitioner had also attempted to initiate arbitration proceeding by unilaterally appointing an arbitrator which was opposed by the respondents before the learned Arbitrator on the ground that there is a



unilateral appointment of the learned Arbitrator. The learned Arbitrator has also rescued from the arbitration proceedings pursuant to notice invoked arbitration Clause on 17.11.2022.

5. Considering the same, the Court is inclined to pass the following order:-

(i) **Mrs.Gladys Rosette C.Daniel, Advocate, (Mobile No.:9789980909) residing at III Floor, YMCA Building, No.223, NSC Bose Road, Chennai – 600 087,** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by



this Court in this order.

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(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

6. The parties are at liberty to workout the venue for Arbitration at Chennai.

7. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs.



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8. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.



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