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Arb.O.P(Com.Div.) No.552 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.552 of 2023

IndusInd Bank Limited,
Represented by its Authorized Representative
P.Vignesh Kumar,
Having its Consumer Finance Division at
No.116, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Petitioner

Vs.

1.Mohamed Ismail.A

2.Syed Sathakathullah

... Respondents

Prayer: Original Petition is filed under Section 11(6)(a) and (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 for appointment of a Sole Arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan Agreement No.TMJ00340L dated 03.12.2020.



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For Petitioner : Ms.S.R.Subaashini

For Respondents : Mrs.R.Sridevi

ORDER

This Original Petition has been filed under Section 11(6)(a) and (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, for appointment of a Sole Arbitrator to resolve the disputes between the petitioner and the respondents in terms of Clause 23 of the Loan Agreement No.TMJ00340L dated 03.12.2020.

2. The dispute between the petitioner and the respondent is arbitrable in terms of Clause 23 of the Loan Agreement dated 03.12.2020.

It reads as under:-

"23. Law, Jurisdiction, Arbitration:-

- i) 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 Sole Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on*



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all the Parties to this agreement.

- ii) 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;*
- iii) The seat, place and venue of Arbitration proceedings shall be at Chennai and the language shall be in English.*
- iv) 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/Co-borrower. The Arbitrator is further entitled to pass any interim directions on the custody of the Asset as well as sale of the asset, or any other directions as may be appropriate to protect the interest of the parties pending resolution of the dispute.*
- v) All notices and other communications on the Lender and the Borrower(s) shall be to the following address, respectively:*

*For Lender: Consumer Finance Division
Office : IndusInd Bank Ltd., No.34,
G.N.Chetty Road, T.Nagar, Chennai -*



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600 017.

For Borrower and Co-borrower: The residential address stated in this Agreement unless change of address was notified by the Borrower or Co-borrower."

3. The first respondent has filed a Counter Affidavit. The respondents have objected to the maintainability of the Original Petition that the Loan Agreement has been tampered.

4. The learned counsel for the respondents has drawn attention to the Loan Agreement dated 03.12.2020. It is submitted that the Loan Agreement is not signed in all pages.

5. That apart, the learned counsel for the respondents would submit that the petitioner has relied on a Promissory Note dated 03.12.2022, which is overwritten indicating tampering and therefore no valid Loan Agreement was signed between the petitioner and the respondents.

6. By way of rejoinder, the learned counsel for the petitioner would submit that the petitioner had invoked arbitration clause and appointed an



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Advocate from this Court as the Sole Arbitrator. However, the respondent filed an objection under Section 16 of the Arbitration and Conciliation Act, 1996 on the ground of appointment of the Arbitrator was unilateral and contrary to the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516. It is submitted that no other objection was raised regarding maintainability of the Arbitral Proceedings before the Arbitral Tribunal.

7. Under these circumstances, the learned Arbitrator has recused himself by a communication dated 15.02.2023. On a query as to whether at all, the respondents had borrowed any money from the petitioner or not, there is no clear answer from the learned counsel for the respondents. Therefore, the objection for appointment of an Arbitrator cannot be entertained.

8. The petition was filed during October 2023. Till date, no Counter Affidavit has been filed. I see no reasons to delay in passing order any



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further. I see no point in keeping this petition for a further period for the respondents to file a copy of the Loan Agreement as there is no categorical denial regarding Loan Agreement dated 03.12.2022 signed between the petitioner and the respondents.

9. Considering the same, this Court is inclined to appoint **Mr.Arun Anbumani, Advocate, Enrollment No.MS/1355/2003, having Office at IV, High Court Chambers, High Court Buildings, Chennai – 600 104, Mobile No.98410 56005**, as the Sole Arbitrator to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.

10. 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 29A 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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11. 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 subject to the Final Award to be passed by the learned Arbitrator.

12. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

13. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17

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of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.
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14. It is open for the respondents to raise all objections that are available under law before the learned Arbitrator.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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