



Arb.O.P.(Comm.Div.) No.471 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.12.2024

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

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M/s.ARKA Fincap Limited
(Formerly Known as Kirioskar Capital Limited),
Having registered office at: 2504, 25th Floor,
One Lodha Place, S.B. Marg, Lower Parel,
Mumbai-400 013.
And Regional office at:
2nd Floor, 31/1, 13/1, Premises No 29, Dr. Nair Road,
Above Federal Bank, T.Nagar, Chennai,
Tamil Nadu – 600 017.
Rep. by its Authorised Signatory,
Mr.Dharanidharan.V

... Petitioner

VS.

1.Mr.Subramanian Saravanan

2.Smt.Subbulakshmi Saravanan

... Respondents



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PRAYER: Arbitration Original Petition filed under Sections 11 (5) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator in term of the Arbitration and Conciliation Act, 1996 to resolve the issue, claim and difference between the parties as per Clause 21 of Loan Agreement dated 30.06.2023.

For Petitioner : Mr.V.Balasubramani

For Respondents : No Appearance.

ORDER

This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint an Arbitrator in respect of the dispute arising out of alleged violation of the Loan Agreement dated 30.06.2023 between the petitioner and the respondents.



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2. I have heard Mr.V.Balasubramani, learned counsel for the petitioner. There is no appearance on the side of the respondents. In fact, this Court permitted effecting service on the respondents through Substituted Service and publication has also been effected pursuant to the order of this Court dated 27.11.2024 for the hearing dated 17.12.2024. Despite the publications in one issue of Tamil & English respectively in '*Dinamani*' and '*Business Standard*', dated 04.12.2024, the respondents have neither chosen to appear in person nor through counsel. Therefore, the respondents are hereby set exparte.

3. I have proceeded to hear the learned counsel for the petitioner Mr.V.Balasubramani and I have also perused the records.

4. The case of the petitioner is that the respondents have approached the petitioner seeking business loan and the petitioner sanctioned a sum of



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Rs.25,31,860/- to the respondents as per the terms and conditions as agreed between the petitioner and the respondents. As per Clause 21 of the Loan Agreement dated 30.06.2023, the parties have agreed to resolve their differences and disputes by resorting to Arbitration and that the said arbitration proceedings would be held at Mumbai, Maharashtra, India. The relevant Clause in the Loan Agreement is set out below:-

*“This agreement shall be governed by the laws of India. The parties hereto expressly agree that all disputes arising out of and/or relating to the Loan, this or any other relevant document shall be referred to a sole arbitrator, to be appointed by the Lender. The place of the arbitration proceeding shall be in **Mumbai, Maharashtra, India**. The costs of such arbitration shall be borne by the losing party or otherwise as determined in the arbitration award if a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney’s fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award”*

5. When disputes arose between the parties, the petitioner issued a loan recall notice dated 22.03.2024 calling upon the respondents to settle the claim. The petitioner also issued a Section 21 Notice on 02.05.2024



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which was returned with an endorsement '*Door Locked-Intimation Served*'.

Thereafter, the above Arbitration Original Petition has been filed. Even before this Court, the respondents have not chosen to appear despite attempts made by the petitioner to serve notice and finally substituted service was permitted and the same was also effected.

6. The Loan Agreement provides for an Arbitration Clause in 21 and the petitioner has also rightly invoked Section 21 of the Arbitration and Conciliation Act, 1996. Therefore, petitioner is entitled to seek appointment of a sole arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the said Loan Agreement dated 30.06.2023.

7. In view of the foregoing discussions, I am inclined to appoint **Mr.J.Aditya Reddy, Advocate, having office at 21/11, PS Sivasamy**



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Salai, Mylapore, Chennai -04, Cell:98848 11101,

E.mail:redhy.adithya@gmail.com as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law.

8. The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than six (6) months from the date of his entering into reference.

9. Accordingly, this Arbitration Original Petition is allowed.

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,

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