



WEB COPY



Arb.O.P.(Com.Div.)No.1 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.1 of 2024

M/s.Tata Capital Financial Services Limited,
Represented by its Authorised Representative/Power Agent
Mr.Noyal James
Registered office at
11th Floor, Tower A, Peninsular Business Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai – 400 013

Branch Office at
1st Floor, Centennials Square,
6A, Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

... Petitioner

Vs.

1.M/s.Vel Agencies,
Proprietor Mr.D.Balamurugan,
No.39, Vanniamman Kovil Street,
Erode – 638 005.

2.Mr.D.Balamurugan

3.S.Vanitha

... Respondents



Arb.O.P(Com.Div.)No.1 of 2024

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon the dispute arisen between the petitioner and the respondents.

For Petitioner : M/s.Abitha Banu

For Respondents : No Appearance

ORDER

This petition has been filed by the petitioner for appointing an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate upon the dispute arisen between the petitioner and the respondents.

2. Despite service of notice on the respondents through substituted service of notice and name being printed in the Cause List today, there is no representation on behalf of the respondents.

3. The dispute between the petitioner and the respondents is arbitrable in terms of Loan cum Guarantee Agreement dated 06.08.2022. Relevant Clause in the Loan cum Guarantee Agreement dated 06.08.2022 reads as under:-

“12.Arbitration:



WEB COPY

If any dispute, difference or claim arises between any of the Obligor and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No.17 of Annexure 1 hereto of the Agreement.

The party invoking the arbitration (“Claimant”) shall address a notice to the other party (“Respondent”) suggesting the name of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience. The respondent shall either:

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the claimant within a period of ten (10) days from the date of notice (“Notice Period”); or

(ii) Convey Objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the parties.

In the event, the respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all



parties concerned. The cost of arbitration shall be borne by the obligor/s.”

WEB COPY

4. The petitioner has also issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 25.07.2023. However, there is no response from the respondents.

5. Considering the above, **Mr.K.N.Pandian, Advocate, (En.No.801 of 80) having office at No.476, New Additional Law Chambers, V Floor, High Court, Chennai (Mobile No.9444294525)**, is appointed as an arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

6. 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.



Arb.O.P(Com.Div.)No.1 of 2024

7. 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 remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

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

9. 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 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

12.03.2024
(½)

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



WEB COPY



Arb.O.P(Com.Div.)No.1 of 2024

C.SARAVANAN, J.

jas

Arb.O.P.(Com.Div.).No.1 of 2024

12.03.2024