



Arb.OP.(Com.Div).No.588 of 2023

C. SARAVANAN, J.

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This Arbitration Original Petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator.

2. The Sole Arbitrator appointed by this Court dated 19.01.2024 under the Arbitration Clause had recused himself pursuant to the objections raised by the respondent in light of the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516.

3. The Loan-cum-Hypothecation Agreement dated 26.05.2022 contemplates a clause for resolving the dispute through arbitration for Construction of Equipment Finance. Relevant Clause reads as under:-

“14. If any dispute, difference or claim arises between any of the Obligors 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 arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 13(a) of Annexure I



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hereto of the Agreement.

The Party invoking the arbitration ("Claimant") shall address a notice to the other Party ("Respondent") suggesting the names 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 appointment of the sole arbitrator shall be referred to the Council for National and International Commercial Arbitration (CNICA) and the arbitrator shall be appointed by them from their panel of arbitrators.

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."

3. Annexure to the aforesaid Loan-cum-Hypothecation Agreement



indicates that the place of arbitration agreed between the parties is Chennai. It is noticed that the loan has been advanced by the petitioner to the respondent in Kozhikode, Kerala. The respondent appears to have defaulted in repaying the amounts under the loan. Thus, there is a clear case made out for resolution of dispute through arbitration in terms of Clause 13 of the Arbitration and Conciliation Act, 1996.

4. The place of arbitration cannot be altered as it has been specifically agreed between the parties. The expenses for the arbitration proceedings are to be borne by the parties equally. Considering the fact that the dispute arises in respect of the loan advanced by the petitioner to the respondent is Kerala, this Court is inclined to appoint **Mr. Justice K. Ramakrishnan residing at “Krishnakripa”, Pandathil Cross Road, Eroor P.O., Kochi 682 306 having Contact Nos. 0484278066 and +91 94964 10500**, former Judge of Kerala High Court/Formal Chairman of National Green Tribunal as the sole arbitrator to resolve the *inter se* dispute between the parties under the aforesaid Loan-cum-Hypothecation Agreement for construction of equipment finance.

5. It is made clear that although the place of arbitration will be Chennai for all future litigations before the Courts under Section 34 or



enforcing the Award under Section 36 of the Arbitration and Conciliation Act, 1996, the Venue of the arbitration shall be at the discretion of the learned Arbitrator appointed by this Court and at the mutual consent of the parties, the learned Arbitrator is also permitted to take advantage of the video conferencing.

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 a Final 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.

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 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.

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8. 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.

9. All the issues relating to merits including limitation shall be decided by the arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

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

15.02.2024

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