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Arb.O.P.(Com.Div.)No.603 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.603 of 2023

M/s.Indusland Bank Limited,
Represented by its Authorized Signatory,
Mr.P.Vignesh Kumar,
Office at: New No.34 (Old No.115 and 116),
G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

.. Petitioner

Vs.

1.Sarat Jyoti Dey

2.Bijay Sen

.. Respondents

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 differences and disputes between the parties under the Loan Agreement No.BJJ00725D dated 28.08.2018.

For Petitioner : M/s.Meera Gnanasekar

For Respondents : No Appearance



ORDER

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Notice on the respondents have been served as is evident from the postal acknowledgement card which enclosed along with the Affidavit of Service and the extract of the tracking consignment note downloaded from the Postal Department. Despite the same, the respondents have failed to appear before this Court.

2. This is the second round of litigation before this Court. Earlier an Award came to be passed by the arbitral Tribunal on 30.08.2022 which was challenged by the respondents by way of Arb.O.P.(Com.Div)No.679 of 2022 before this Court vide its order dated 30.03.2023, this Court had interfered with the Award in the light of the decision of the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC Vs. HSCC (India) Ltd*** reported in ***2019 SCC Online SC 1517***, which was followed by the another decision of the Court in ***TRF Limited Vs. Energo Engineering Projects Limited***.

3. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 23 of the loan agreement dated 28.08.2018 which reads as under:-



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“23.Law, Jurisdiction, Arbitration.

23.1. All disputes, differences, and/or claim arising out of or touching upon this agreement whether during its subsistence or thereafter 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

23.4. 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.

23.5. 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:
Indusland Bank Limited No.34, G.N.Chetty Road,
T.Nagar, Chennai – 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.”

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4. The respondents have failed to respond to the notice that was served on the petitioner pursuant to notice that was ordered on 02.01.2024.

5. The dispute between the petitioner and the respondents is arbitrable and since the respondents have failed to respond the notice, it is deemed that the respondents have forfeited their rights.

6. Considering the above, **Mr.G.R.Lakshmanan, Advocate**, having office at **No.103, Law Chambers, High Court Buildings, Chennai – 600 104, (Mobile No.9282103855)** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

7. 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.

8. 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 respondent 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.

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

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



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11. 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.

20.02.2024

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

C.SARAVANAN, J.



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