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Arb.O.P.(Com. Div.) No.16 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.16 of 2025

M/s.NEW LINK OVERSEAS FINANCE LTD.,
Represented by its Director,
Through by Authorized Singnatory,
Mr.P. Viswanathan,
Mamatha Complex, Second Floor,
No.25, Whites Road, Royapettah,
Chennai - 600 014.

... Petitioner

Vs.

1. R.Thyagarajan
2. S. Nainar

... Respondents

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents and to direct the respondents to pay the cost.

For Petitioner : Mr. D. Vinisha

For Respondents : Ms. S. Prathibaa
No appearance

ORDER

This application has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this



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2. Till date counter has not been filed by the respondents. Eventhough a counsel has entered appearance for the respondents, she is also absent today. Therefore, the respondents are set *ex-parte* by this Court.

3. There seems to be a dispute arising out of the hypothecation agreement dated 30.09.2010 entered into between the petitioner and the first respondent and a letter of guarantee dated 30.09.2010 entered into between the petitioner and the second respondent. The petitioner is a non banking financial company. They have lent money to the respondents.

4. According to the petitioner, the respondents have committed default in the repayment of the loan to the petitioner. In the hypothecation agreement dated 30.09.2010, there exists an arbitration clause, which is extracted hereunder:

"22. LAW, JURISDICTION, ARBITRATION

22.1 All disputes, differences and / or claim arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance



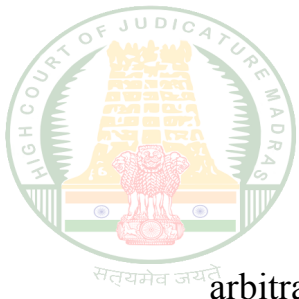
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with the provisions of the Arbitration and conciliation Act, 1956, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this agreement. It is a term of this agreement that in the events of such an arbitrator to whom the matter has been originally referred dying 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.

22.2 The venue of arbitration proceedings shall be at Chennai.

22.3 The arbitrator so appointed herein above, shall also be entitled to pass an award on the hypothecated assets and also on any other securities furnished by or on behalf of the Borrower."



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5. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent as per the provisions of Section 21 of the Arbitration and Conciliation Act on 22.11.2024. Despite receipt of the said invocation notice, the respondents neither chose to send any reply nor gave their consent for arbitration. A separate arbitration agreement dated 30.09.2010 was also entered into between the petitioner and the respondents, under which, the parties have agreed to go for arbitration.

6. Since the parties have agreed to go for arbitration if there arises any dispute out of the hypothecation agreement dated 30.09.2010 and deed of guarantee dated 30.09.2010 and since the petitioner has satisfied the requirements of Section 21 of the Arbitration and Conciliation Act, by issuing notice to the respondents on 22.11.2024 and since there is no consensus between the parties with regard to the name of the arbitrator, this Court has to necessarily appoint an arbitrator as prayed for by the petitioner.

7. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:



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(a) Mr.G. Vinobha, Retired District Judge, who is having address at No.56/1A, 2nd Street, Thirumalai Nagar, Chengalpattu - 603 001 (Mobile No.94439 05909) is appointed as the sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the hypothecation agreement dated 30.09.2010 entered into between the petitioner and the first respondent, a letter of guarantee dated 30.09.2010 entered into between the petitioner and the second respondent and arbitration agreement dated 30.09.2010 entered into between the petitioner and the respondents;

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;

(c) Both the parties shall equally share the arbitrator's fees;

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

06.03.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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