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Arb.O.P (Com.Div.) No.22 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.22 of 2025

M/s.Kotak Mahindra Prime Ltd.,
represented by its Authorised Representative
Santhosh Kumar (Deputy Manager)

.. Petitioner

VS

1.Sai Sri Saraswathi Construction Pvt. Ltd.,
Chennai - 600 017.

2.Balakumar R.

.. Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to resolve the dispute that has arisen between the petitioner and the respondent with regard to the said Loan Agreement bearing No.CF12925260 dated 30.04.2016.

For Petitioner : Mr.S.Rajeni Ramadoss

For Respondents : Mr.V.Manoharan

ORDER



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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court.

2.Earlier, the learned counsel for the respondents sought time to negotiate with the petitioner and to arrive at an amicable settlement. However, till date, settlement has not been taken place. Earlier, the very same petitioner had appointed an Arbitrator and an award was also passed. However, the said award was put to challenge. By order dated 24.04.2024, this Court in Arb.O.P. (Com.Div.) No.23 of 2024 set aside the Arbitral Award on the ground that the Arbitrator was appointed unilaterally by the petitioner. Since the Arbitral Award has been set aside, the petitioner has initiated fresh arbitration by filing this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court. The arbitration clause contains in the Loan Agreement dated 30.04.2016 is extracted hereunder:

'31.Arbitration:



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All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the rights and liabilities of the parties, hereunder shall be settled by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the arbitration of a sole arbitrator to be nominated by the LENDER. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the LENDER may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be conducted in English language and held at the place more particularly mentioned in the SCHEDULE-I of the present agreement hereunder.

3.Till date, counter has not been filed by the respondents.

4.Learned counsel for the respondents admits that there exists an arbitration clause in the Loan Agreement dated 30.04.2016, which is the subject matter of dispute between the parties. Earlier, he had taken time only on the ground that the respondents will settle the claim of the petitioner.

5.Since the settlement has not taken place, despite sufficient



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opportunities having been given and since there exists an arbitration clause in the Loan Agreement dated 30.04.2016, which is the subject matter of dispute between the parties, this Court has to necessarily appoint an Arbitrator as there is no consensus between the parties with regard to the name of the Arbitrator.

6.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Mrs.A.V.Bharathi, Advocate, having address at No.396, New Additional Law Chambers, Chennai - 600 104 (Mobile No.98847 09207) as the Sole Arbitrator to adjudicate the dispute arising out of the Loan Agreement dated 30.04.2016, on merits and in accordance with law;

(b)The Arbitrator shall be paid her remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996;



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

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

No costs.

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ABDUL QUDDHOSE, J.
vga

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