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Arb.O.P (Com.Div.) No.89 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.89 of 2025

M/s.Shriram Finance Ltd.,
Regional Office at No.123,
Angappan Naicken Street,
Chennai - 600 001.

... Petitioner

Versus

1.A.Arockiadass

2.A.Arockiam

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes arising between the parties under the Loan Agreement RMPU2TF1603290011 dated 30.03.2016.

For Petitioner : Mr.A.Swaminathan

For Respondents : Mr.P.Suresh

ORDER



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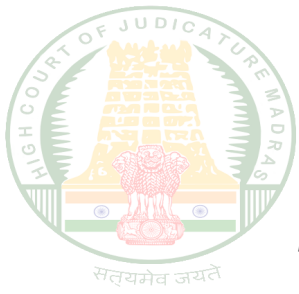
This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for the appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondents arising out of the Loan Agreement dated 30.03.2016. The said Loan Agreement admittedly contains an arbitration clause and the same is extracted hereunder:

'17. Arbitration and Dispute Settlement

a) All disputes, differences and/or claims, arising out of this Agreement, whether during its subsistence or thereafter, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment for the time being in force and shall be conducted by a sole arbitrator to be appointed by the Lender under the provisions of the Arbitration and Conciliation Act, 1996. The applicable law shall be Indian laws. In the event of incapacity or resignation or death of the sole arbitrator so appointed, the Lender shall be entitled to appoint another arbitrator in place of the earlier arbitrator and the proceedings shall continue from the stage at which the predecessor had left.

b) The award given by the arbitrator shall be final and binding on the parties to this Agreement. The cost of the Arbitration



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shall be borne with by the Party/ies, in accordance with the Award passed by the Arbitrator.

c)The venue of Arbitration shall be as specified in Schedule 1 hereto and the proceedings shall be conducted in English language.'

3.The petitioner has invoked arbitration in accordance with the arbitration clause by appointing a Sole Arbitrator. The Sole Arbitrator also passed an Arbitral Award in favour of the petitioner on 30.06.2018 against the respondents in A.C.P. No.49 of 2018. The said Arbitral Award was challenged by the first respondent before the Principal District Court, Ramanathapuram in A.O.P. No.46 of 2021. By order dated 28.03.2022, the earlier Arbitral Award dated 30.06.2018 passed by the Sole Arbitrator in A.C.P. No.49 of 2018 was set aside by the Principal District Court, Ramanathapuram under Section 34 of the Arbitration and Conciliation Act on the ground that the Arbitral Award passed by the Arbitrator at Karaikudi was not the seat of the arbitration. The petitioner was also granted liberty to initiate fresh arbitration through its order dated 28.03.2022 passed under Section 34 of the Arbitration and Conciliation Act. Based on the relief granted by the Principal District Court, Ramanathapuram, the petitioner has



now filed this petition under Section 11 of the Arbitration and Conciliation

Act seeking for appointment of an Arbitrator by this Court.

4.Prior to the filing of this petition, the petitioner had earlier sent a pre-arbitration notice dated 22.06.2023 to comply with the requirement under Section 21 of the Arbitration and Conciliation Act, 1996. Notice sent under Section 21 of the Arbitration and Conciliation Act, 1996 has been returned un-served.

5.Since there is no consensus between the parties with regard to the name of the Arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996.

6.A counter affidavit has been filed by the respondents stating the following reasons:

a)This petition is not maintainable since the petitioner has not stated as to when the cause of action arose for the petitioner to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996;



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b) No proper authorisation has been filed for permitting the Authorised Signatory to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996;

c) While issuing notice dated 22.06.2023 seeking to comply with the requirement of Section 21 of the Arbitration and Conciliation Act, 1996, the very same Arbitrator appointed earlier, who has passed the earlier Arbitral Award, has been nominated by the petitioner.

7. As seen from the defences raised by the respondents before this Court, the same cannot be adjudicated in this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996. While deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996, as per the settled law, this Court can only look into whether on a prima facie consideration there exists an arbitration clause or not. Admittedly, there exists an arbitration clause in the Contract, which is the subject matter of dispute between the parties. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondents on 22.06.2023 in compliance with the requirement of Section 21 of the Arbitration and Conciliation Act, 1996. Admittedly, the petitioner was also



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granted leave to initiate fresh arbitration by the Principal District Court, Ramanathapuram in the Court's order dated 28.03.2022 passed in A.O.P. No.46 of 2021, which was passed under Section 34 of the Arbitration and Conciliation Act, 1996. In the said order dated 28.03.2022, the earlier Arbitral Award passed in favour of the petitioner against the very same respondents was set aside on the ground that the Arbitral Award was passed at Karaikudi, which is not the seat of arbitration, whereas the seat of arbitration as per the arbitration agreement is Sivaganga. Only under those circumstances, this petition has been filed before this Court seeking for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

8.The contentions of the respondents as raised in their counter cannot be adjudicated by this Court under Section 11 of the Arbitration and Conciliation Act, 1996. The contentions if at all can be adjudicated only by the Arbitral Tribunal to be constituted by this Court. The respondents can either file an application under Section 16 of the Arbitration and Conciliation Act 1996 before the Arbitral Tribunal raising the objections which have been raised before this Court or through their statement of



defence filed before the Arbitrator.

WEB COPY 9. Since there exists an arbitration clause in the contract, ie. the Loan Agreement dated 30.03.2016, which is the subject matter of the dispute between the parties and since the petitioner has complied with the requirement of Section 21 of the Arbitration and Conciliation Act by issuing notice to the respondents on 22.06.2023 and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 leaving it open for the respondents to raise all their objections before the Arbitrator appointed by this Court either by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996 or by filing a statement of defence before the Arbitrator with regard to the arbitral claim made by the petitioner in the arbitration.

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

(a) This Court appoints Mr.S.R.Sundar, Advocate, having address at No.261, Old No.127, 2nd Floor, Angappa Naicken Street, Chennai - 600 001, Mobile No.94440 55853 as the Sole Arbitrator to adjudicate the dispute



between the petitioner and the respondents, arising out of the Loan Agreement dated 30.03.2016, on merits and in accordance with law;

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

(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.

(e)Liberty is granted to the respondents to file an application under Section 16 of the Arbitration and Conciliation Act, 1996 raising preliminary issues that have been raised before this Court and once such an application is filed, the Arbitrator shall consider the same, on merits and in accordance with law and pass final orders.

No costs.



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ABDUL QUDDHOSE, J.

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