



Arb O.P(COM.DIV.) NO. 323 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

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M/s. TVS Credit Services Ltd.,
Having its registered office at
Chaitanya No.12, Khader Nawaz Khan Road,
Numbambakkam, Chennai - 600 006.
Corp Office at
No.29, Jayalakshmi estates, Third Floor,
Haddows Road, Nungambakkam,
Chennai, Tamil Nadu 600 006.
represented by its Authorised Signatory/Power of Attorney
Ms.Chitra R.

..Petitioner

Vs

1. M/s.The Peripheral Store,
Rep. by its Managing Partner, Ms.Preeti Singh
No.17, Hombisilu, 2nd Main Road,
AECS Layout, RMV 2nd Stage,
Near Raj Mahal High School,
Sangay Nagar, Bengaluru Urban,
Karnataka - 560 094

Also at

No.4, 2nd Cross 3rd Main Road,
Behind Ganesha Temple, Devasandra,
RMV II Stage, Bangalore - 560 094.

2. Ms.Preeti Singh,
D/W/o Keshav Prasad Gupta,
Managing Partner of M/s. The Peripheral Store



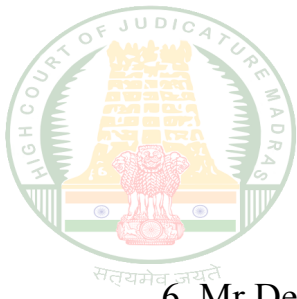
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No.17, AECS Layout NS Halli,
Near Rajmahal School,
Sanjay Nagar,Bangalore,
Karnataka - 560 094.

3. Ms.Archana Mehta,
D/W/o Chaman Lal Kapoor,
Partner of M/s. The Peripheral store,
H.No.131, Mithapur Road, bank Colony, Lane - 3,
Jalandhar-1, Model Town, Jalandhar,
Punjab - 144 003.

4. Ms.Shivani,
D/W/o Jagal Kishor,
Partner of M/s. The peripheral Store,
No.15, Ward No.4, Mundi Kharar,
SAS Nagra (Mohali)
Punjab - 140 301.
Also at
C-14A, Bhagwati Garden Extn,
Uttam Nagar, New Delhi - 110 059.

5. Mr.Himanshu Singh,
Partner of M/s. The Peripheral Store,
No.19, Ground Floor, Skanda Krupa,
2nd Main road, AECS Layout, rMV 2nd stage,
Sanjay Nagar, near RMV High School,
Bengaluru North, bengaluru,
Karnataka - 560 094



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6. Mr. Deepak Kumar,
C-14A, Street No.3, Bhagwati Garden Extn,
DK Mohan Garden, West Delhi.
Delhi - 110 059.

..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 adjudicate upon the differences and disputes between the parties under the Invoice based financing Facility Agreement dated 01.04.2022 and Supplementary cum Modification Agreement dated 04.05.2023 bearing Loan Agreement No.KA5002MS0139578.

For Petitioner : Mr.M.Arunachalam

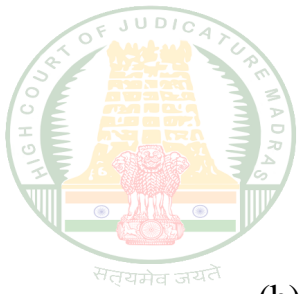
For Respondents : Mr.Thivakkaran
For R1, R2 & R4

ORDER

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

2. There seems to be a dispute between the petitioner and the respondent arising out of the following contracts:

(a) Invoice based Financing Facility Agreement dated 01.04.2022



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(b) Supplemental Deed cum Modification Agreement dated 04.05.2023

(c) Supplemental deed of Hypothecation dated 09.05.2023

3. According to the petitioner certain sums of money are due and payable by the respondent to the petitioner under the aforementioned contracts. There are arbitration clauses in all the aforementioned contracts and the same are extracted hereunder.

(a) Arbitration Clause in Invoice based Financing Facility Agreement dated 01.04.2022.

"23. *Arbitration:*

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 Act 1996 and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Lender. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Lender, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage it is left by his predecessor. The venue of arbitration proceedings



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shall be at Chennai and the Borrower agrees to proceed with the reference from the stage it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai and the Borrower agrees to a fast track arbitration to be disposed of within 90 days from the date of reference.

(b) Arbitration Clause in Supplemental Deed cum Modification Agreement dated 04.05.2023

16. Arbitration & Jurisdiction

i) If any dispute, difference, or claim arises between any of the Borrowers and the Company in connection with the Facility or as to the interpretation, validity, implementation, or effect of facility Documents or as the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything is done or omitted to be done under the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed by any of the following institutions.

(c) Arbitration Clause in Supplemental deed of Hypothecation dated 09.05.2023

25. 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



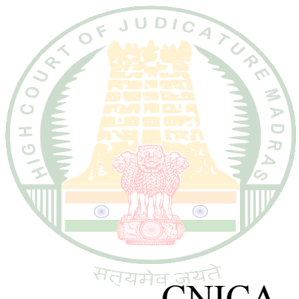
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Act, 1996 and shall be referred to the sole arbitration of an arbitrator nominated by the Lender. The Award given by such arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Lender, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage it is left by his predecessor. The venue of arbitration proceedings shall be at Chennai. The Borrower agrees to a fast track Arbitration to be disposed within 90 days from the date of reference.

4. According to the petitioner, the Arbitration Clauses found in the aforementioned contracts are also applicable to the Deed of Hypothecation dated 04.05.2023. The petitioner has invoked arbitration clause by issuing notice to the respondents on 19.09.2023 as per Section 21 of the Arbitration and Conciliation Act. Thereafter, the petitioner, as per arbitration clause approached Council for National and International Commercial Arbitration (CNICA) for appointment of an Arbitrator. An Arbitrator was also appointed by CNICA. However, since objections were raised by the respondents for the Arbitrator nominated by



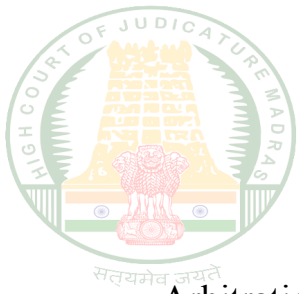
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CNICA to arbitrate the dispute, the Arbitrator had recused himself from arbitration through recusal letter dated 19.07.2024. Since the Arbitrator has recused from arbitration, the petitioner has been constrained to file this petition under Section 11 as well as under Section 15 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court. Some of the respondents have filed their counter to this petition and the others have not filed though this petition was filed in the year 2024 itself.

5. As seen from the counters, the respondents have objected to the appointment of an Arbitrator by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 stating the following reasons.

(a) Notice under Section 21 of the Arbitration and Conciliation Act has not been issued by the petitioner to the respondents insofar as the dispute arising out of the Supplementary cum Modification Agreement dated 04.05.2023 is concerned.

(b) The petitioner has filed this petition both under Section 11 and Section 15 of the Arbitration and Conciliation Act which is not maintainable. Section 15 of the Arbitration and Conciliation Act enables the petitioner to approach this Court seeking for substitution of an Arbitrator whereas, Section 11 of the



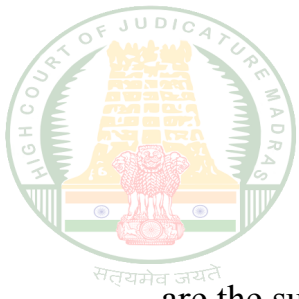
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Arbitration and Conciliation Act, enables the petitioner to approach this Court for appointment of a fresh Arbitrator. Therefore, the reliefs cannot be sought for by the petitioner under both the aforesaid Sections.

6. Admittedly, there exists an arbitration clause in all the contracts which are the subject matter of dispute raised by the petitioner before this Court. The arbitration clauses contained in all the contracts which are the subject matter of dispute have been extracted by this Court earlier. The existence of the said clauses are also not disputed by the learned counsel for the respondents. The main objection for this Court appointing an Arbitrator under Section 11 of the Arbitration and Conciliation Act raised by the respondents is that the petitioner did not invoke arbitration by complying with the requirements of Section 21 of the Arbitration and Conciliation Act insofar as the Supplementary cum Modification Agreement dated 04.05.2023 is concerned.

7. Admittedly, the claims of the petitioner are interlinked in all the three contracts namely, (a) Invoice based Financing Facility Agreement dated 01.04.2022, (b) Supplemental Deed cum Modification Agreement dated 04.05.2023 and (c) Supplemental deed of Hypothecation dated 09.05.2023, which



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are the subject matter of dispute raised by the petitioner in this petition.

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8. Admittedly, in the reference letter dated 19.09.2023 issued by the petitioner invoking arbitration as per section 21 of the Arbitration and Conciliation Act, 1996, no reply was sent by the respondents to the said reference letter. Since on a *prima facie* consideration, this Court finds that all the contracts which are the subject matter of dispute as raised by the petitioner are interlinked, the question of considering the objections as raised by the respondents through their counter does not arise as it does not deserve any merit.

9. Insofar as the provisions of law quoted by the petitioner for filing this petition is concerned, this Court is of the considered view that it is well settled that quoting wrong provision of law will not disentitle the petitioner from the grant of any relief if the petitioner is able to convince this Court that they are entitled for the relief as prayed for. The petitioner has filed this petition both under Section 11 and Section 15 of the Arbitration and Conciliation Act only by way of abundant caution. Section 11 of the Arbitration and Conciliation Act empowers this Court to appoint an Arbitrator. Section 15 of the Arbitration and Conciliation Act is a provision which enables this Court to substitute the



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Arbitrator. Admittedly, earlier, the petitioner had approached CNICA for appointment of an Arbitrator and an Arbitrator was also appointed. Only due to the fact that the said Arbitrator has recused himself from the arbitration, the petitioner has been constrained to file the petition under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator. Therefore, the petitioner, by way of abundant caution has filed this petition both under Section 11 and Section 15 of the Arbitration and Conciliation Act. Since this Court does not find any merit in the objections raised by the respondents with regard to the provisions of law quoted by the petitioner for filing this petition, the said objection is also rejected by this Court.

10. This Court while deciding the petition under Section 11 of the Arbitration and Conciliation Act has to only look into the *prima facie* existence of the arbitration clause. When on a *prima facie* consideration, this Court is of the considered view that there exists an arbitration clause in the agreement entered into between the parties which has been extracted supra 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 under Section 11 of the Arbitration and Conciliation Act.



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11. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions :-

a) This Court appoints Mr.Naveen Kumar Murthy, Advocate having Office at S2, 2nd Floor, Singapore Plaza, No.164, New No.337, Linghi Chetty street, Chennai - 600 001 (Mobile No.9884740424) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the aforesaid Purchase Order.

(b) The Arbitrator shall be paid his /her 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.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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