



Arb. O.P. (Com. Div.) No.439 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.439 of 2024

Tata Capital Limited
(transferee of Tata Capital Financial Services Limited)
Represented by its Authorised Representative/Power Agent
Mr.Selvabalaji Rajendran
Registered Office at
11th Floor, Tower A,
Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai 400013.

Branch Office at 1st Floor, Centennials Square,
6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai 600 024.

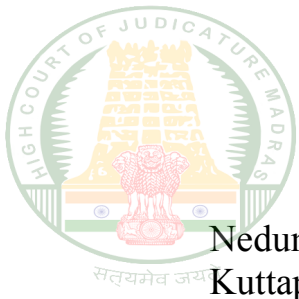
... Petitioner

vs.

1. NCS Automotives Pvt.Ltd.
35/422, Planthottam Complex, Near KSRTC Bus stand,
Thiruvalla, Pathanamthitta, Kerala -689101.

2. Raju George,
Nedumparambil Gardens,
Kuttapuzha PO, Kuttapuzha SO,
Thiruvalla, Kerala 689103.

3. Grace Raju



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Nedumparambil Gardens,
Kuttapuzha PO, Kuttapuzha SO, Thiruvalla,
Kerala – 689103.

- Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs :-

a. Appoint a sole Arbitrator to adjudicate upon the dispute arisen between the Petitioner and the Respondents and

b. Pass such further or other reliefs as this Hon'ble Court may deem fit

For Petitioner : Ms. Abitha Banu

ORDER

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. There seems to be a dispute between the petitioner and the respondents arising out of Loan cum Guarantee Agreements (Channel Finance), dated 16.07.2021 and 26.09.2022 respectively.

3. According to the petitioner, certain sums of money are due and payable by the respondents to the petitioner under the aforementioned agreements. In both the agreements viz., Loan cum Guarantee



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Agreements (Channel Finance), dated 16.07.2021 and 26.09.2022

respectively, there exists an arbitration clause, which is extracted hereunder :-

12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place agreed by the parties in Serial No.17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other Party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court of the Supreme Court or a lawyer having minimum 10 years' relevant experience. The Respondent shall either :

i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a



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period of ten (10) days from the date of notice (“Notice Period”)

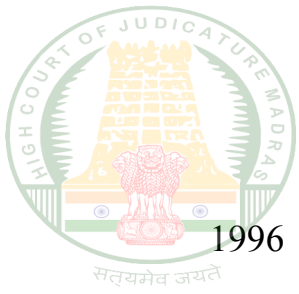
or

(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.

In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s.

4. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing a notice to the respondents as per the provisions of Section 21 of the Arbitration and Conciliation Act,

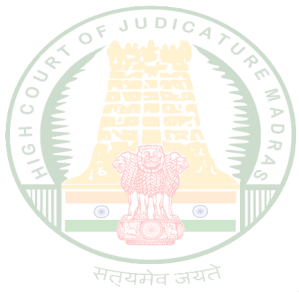


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1996 on 10.05.2024. The said notice has been returned by the respondents. As directed by this Court, the petitioner has effected Substituted Service on the respondents. The Affidavit of Service enclosing the paper publication has also been filed. Since there is no representation on the side of the respondents, the respondents are set ex-parte by this Court. Since there is no consensus between the parties with regard to the name of the arbitrator, the petitioner has been constrained to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an arbitrator by this Court.

5. Since there exists an arbitration clause in the agreements, which are the subject matter of the dispute between the petitioner and the respondents and since the petitioner has complied with the statutory requirement by issuing notice to the respondents on 10.05.2024 as per the provisions of Section 21 of the Arbitration and Conciliation Act 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.

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



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a) This Court appoints Mr.G. Dharmaraj, District Judge(Retd.), residing at No.E-3, E Block, Lake View Apartments, (Ramana Apartment), Anna Highway, Perungudi, Chennai – 600 096, (Mobile No.98417 04448) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the Loan cum Guarantee Agreements (Channel Finance), dated 16.07.2021 and 26.09.2022 respectively.

(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.

24.02.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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