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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P(COM.DIV.) No. 590 of 2024

MUP Managed Business Services LLP
Rep. by its Partner, Mr.TK.Sundara Rajan,
Level 6, 10/11, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 040

..Petitioner

Vs

Dr.A.Asif Baig,
S/o Amanullah Baig Vellore Subhan,
No.21, Khader Nawaz Khan Road,
Rultland Gate, Nungambakkam,
Chennai - 600 034.

..Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator to her and decide the disputes that have arisen between the petitioner and respondent under the Agreement for Personal Loan dated 26.04.2018.

For Petitioner : Mr.V.P.Raman

For Respondent : Mr.R.D.Ashok kumar
for Mr.S.N.Ravichandran

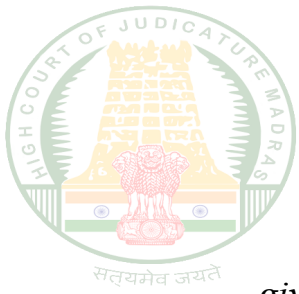
**ORDER**

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

2. There seems to be a dispute arising out of an agreement for personal loan dated 26.04.2018 between the petitioner and the respondent. According to the petitioner, certain sums of money are due and payable by the respondent to the petitioner. However, the same is disputed by the respondent. In the agreement for personal loan dated 26.04.2018, there exists an arbitration clause and the same is extracted hereunder.

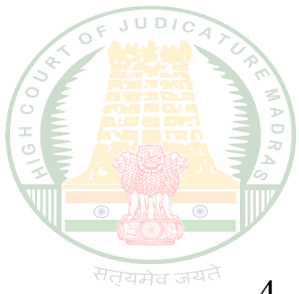
"24. All disputes, differences and /or claim or questions arising of of these presents or in any way touching or concerning the same or as the constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof, of a sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator to bee a sole arbitrator. The arbitrator shall not be required to



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give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be held at Mumbai/Delhi/Chennai/Kolkata."

3. 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, 1996 on 02.05.2020. No reply has been received from the respondent to the petitioner for the said notice. Earlier, the petitioner had appointed a former Judge of this Court as the sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of an agreement of personal loan dated 26.04.2018. The petitioner has also obtained an arbitral award in their favour. However, the petitioner in this petition has stated that since the petitioner had appointed the Arbitrator unilaterally and since the arbitral award passed by an Arbitrator appointed unilaterally will be contrary to the judgment of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited*** reported in (2020) 20 SCC 76, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.



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4. The petitioner has also given unconditional undertaking in this petition that they shall not execute the arbitral award passed earlier in their favour against the respondent since the said arbitral award was passed by an Arbitrator appointed unilaterally by the petitioner.

5. This Court, by its order dated 18.02.2025 had also recorded the submission of the learned counsel for the petitioner on instructions that he would be withdrawing the earlier memo dated 04.02.2025 filed by the petitioner before this Court. Today, the learned counsel for the petitioner, on instructions, seeks permission of this Court to withdraw the memo filed by the petitioner dated 04.02.2025. Accordingly, the memo dated 04.02.2025 filed by the learned counsel for the petitioner is dismissed as withdrawn.

6. A counter has been filed by the respondents in this petition raising the following conditions.

- (a) The claim of the petitioner is barred by limitation.
- (b) The petitioner disputes the contract dated 26.04.2018 which is the subject matter of the dispute raised by the petitioner.
- (c) The earlier arbitral award passed in favour of the petitioner by the



Arbitrator appointed by the petitioner unilaterally, was never communicated to the respondent. Therefore, the respondent was prevented from taking recourse to challenge the said arbitral award as per the provisions of Section 34 of the Arbitration and Conciliation Act.

7. Admittedly, the signature of the petitioner as found in the agreement for personal loan dated 26.04.2018 which is the subject matter of dispute between the parties has not been disputed by the respondent as seen from his counter. He disputes that he had signed the agreement for personal loan dated 26.04.2018 through which he has availed the loan from the petitioner. Admittedly, prior to the initiation of the arbitration by the petitioner earlier, the petitioner had issued a legal notice to the respondent on 16.12.2018. Thereafter, the petitioner had also invoked the arbitration as per the provisions of Section 21 of the Arbitration and Conciliation Act by issuing notice to the respondent on 02.05.2020. The said notices having not been denied by the respondent in the counter filed before this Court. The petitioner has also given an undertaking in this petition that they shall not execute the arbitral award dated 26.09.2021 passed in their favour against the respondent since the arbitral award was passed by an Arbitrator appointed unilaterally by the petitioner. The law is now well settled by the Hon'ble Supreme

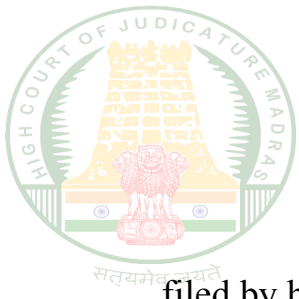


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Court through *Perkins Eastman Architects DPC and another vs. HSCC (India)*

Limited reported in (2020) 20 SCC 76 that unilateral appointment of an Arbitrator is legally impermissible under law. Since the petitioner has given unconditional undertaking before this Court that they shall not execute the arbitral award dated 26.09.2021 passed in their favour against the respondent and since there is no consensus between the parties with regard to the name of the Arbitrator and since the petitioner has satisfied the statutory requirement of section 21 of the Arbitration and Conciliation Act by issuing notice to the respondent on 02.05.2020, this Court will have to necessarily appoint an Arbitrator as prayed for, in this petition. The contentions of the respondent as referred to supra cannot be considered by this Court in an application filed under Section 11 of the Arbitration and Conciliation Act, 1996. While deciding an application under section 11 of the Arbitration and Conciliation Act, 1996, this Court will have to look into whether on a prima facie consideration, there exists an arbitration clause or not.

8. Admittedly, in the agreement for personal loan dated 26.07.2018, which is the subject matter of dispute raised by the petitioner, there exists an arbitration clause. The signature in the agreement for personal loan dated 26.04.2018 of the respondent has also not been disputed by the respondent as seen from the counter



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filed by him before this Court. Though he has disputed the existence of arbitration clause and the execution of the agreement for personal loan dated 26.04.2018, the same cannot be considered by this Court in a section 11 petition, since the respondent does not deny his signature as found in the agreement for personal loan dated 26.04.2019 which contains the arbitration clause. The petitioner has also made an unconditional statement in this petition stating that they shall not execute the arbitral award passed in their favour by the sole Arbitrator appointed by the petitioner unilaterally on 26.09.2021. Therefore, no prejudice would be caused to the respondent if this Court appoints a fresh Arbitrator as sought for by the petitioner in this petition. All the grievances of the respondent as raised through his counter can be redressed only 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 counter in the main arbitration claim launched by the petitioner against the respondent. Therefore, this Court has to necessarily allow this petition by appointing an Arbitrator under section 11 of the Arbitration and Conciliation Act, 1996.

9. 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 The Hon'ble Mr. Justice K.Ravichandrabaabu, Former Judge, Madras High Court, residing at 1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai - 600 020 (Mobile No.9498033336) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the aforesaid Personal Loan Agreement.

(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.

24-02-2025

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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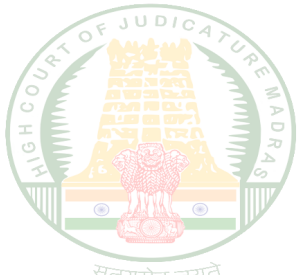
To

Dr.A.Asif Baig,

S/o Amanullah Baig Vellore Subhan,

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ABDUL QUDDHOSE,J.

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