

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

6.

+

O.M.P. 202/2015

RAHUL ANAND & ORS.

..... Petitioners

Through: Mr. Roshan Lal Goel, Mr. Vikas Tandon
Mr. Manak, Advocates.

versus

RELIGARE FINVEST LIMITED

..... Respondent

Through: Mr. Ajay Uppal, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

%

24.11.2016

1. This is a petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') challenging the Award dated 8th October, 2014 passed by the learned sole Arbitrator in the disputes between the parties arising out of a Loan Agreement dated 7th March, 2011 for a loan of Rs. 1,60,31,267.

2. At the outset, proxy counsel for the counsel for the Petitioners sought an adjournment on the ground that counsel for the Petitioners is in some personal difficulty today.

3. It is seen that even on 13th July 2016, counsel for the Petitioners did not appear as a result of some difficulty. On that date the following order was passed by this Court:

“Mr.Ashok Taneja, Advocate has not appeared due to personal difficulty. Counsel for the respondents states that there is no merit in the objections filed by the petitioners. Due loan amount is liable to be

paid by the petitioners. According to him, at one point of time the petitioners gave their offer to pay a sum of Rs. 1,10,00,000/- to the respondents towards full and final settlement of the loan amount. But later on they backed out. List on 9 September, 2016. In view of the nature of the facts in the present case, all the petitioners shall remain present in person before Court on the next date for the purpose of settlement, if any. In case no settlement is arrived at, the objections filed by the petitioners would be considered on merit.”

4. It is, therefore, not possible for this Court to keep adjourning the present petition for the same reason. If counsel for the Petitioners was going to be in some difficulty today, he ought to have filed an application seeking postponement of the date.

5. A perusal of the impugned Award reveals that it was a contested Award. One of the contentions raised by the Petitioners before the learned Arbitrator was that they had signed a blank Loan Agreement. However, in the course of arguments that ground was not pressed. It was then contended, as has been done in the present petition, that the outstanding liability of the Petitioners was only for Rs. 1.10 crores. The learned Arbitrator noted that the Petitioners failed to explain how they arrived at the said figure of 1.10 crores. Even before this Court, nothing has been placed on record by the Petitioners to demonstrate how the outstanding liability is only Rs. 1.10 crores.

6. It was then contended before the learned Arbitrator that in view of Clause 10.2 of the Loan Agreement which provided for exclusive jurisdiction of the Courts in Delhi, the arbitration clause i.e., Clause 10.1 stood superseded. The learned Arbitrator rejected the said assertion and held that the

arbitration clause was 'clear and unambiguous'.

7. The same plea is urged before this Court as well. The Court fails to appreciate how Clause 10.2 which provides for exclusive jurisdiction of the Courts in Delhi *qua* the arbitral proceedings can possibly supersede the arbitration clause. Clearly, this was a misconceived submission and was rightly rejected by the learned Arbitrator.

8. A perusal of the impugned Award further reveals that the Respondent placed before the learned Arbitrator all the relevant documents to substantiate its claim. On that basis, the learned Arbitrator proceeded to hold that the Petitioners were liable to repay the loan amount which on 5th July, 2013 stood as 1,60,38,608.43. The said amount had been awarded together with simple interest at 18% pa from 5th July 2013 till the date of payment in terms of Section 31(7) (a) of the Arbitration & Conciliation Act, 1996. It has further been held that a mortgage has been created in favour of the Respondent in respect of the immovable property of the Petitioners i.e., H. No.7/4, Roop Nagar, Delhi - 110007.

9. Having carefully examined the petition under Section 34 of the Act, the Court finds that no grounds have been made out for interference.

10. The petition is, accordingly, dismissed.

S. MURALIDHAR, J

NOVEMBER 24, 2016

mg