* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 4th May, 2016***
Judgment Pronounced on: 17th May, 2016

\+ **O.M.P. (COMM.) No.112/2016**

M/S METAL CLOSURES AND ORS ..... Petitioners
Through Mr.Sulabh Rewari, Adv. with Ms.Pritha Sri Kumar Iyer & Ms.Nayantara Narayan, Advs.

versus

RELIGARE FINVEST LTD. & ANR ..... Respondents
Through Mr.Ajay Uppal, Adv. for R-1.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the abovementioned objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") for setting aside an Arbitral Award dated 17th September, 2014.

2. Before dealing with the objections filed by the petitioners, it is necessary to refer certain admitted facts.

2.1. The respondent No.1 is a Company is *inter alia* engaged in the business of providing financial and credit facilities in the form of various kinds of loans.

2.2. The petitioners approached the respondent No.1-Company, which also includes predecessor of the Company, collectively/jointly for availing financial facility.

2.3. The respondent No.1-Company sanctioned and disbursed a loan for a sum of Rs.2,10,00,000/- to the petitioner. The petitioners on grant of the aforesaid loan executed Loan agreement No.XMORKRM00034134 thereby *inter alia* agreeing to repay the said loan amount with interest @ 16% p.a. and also created a charge with respect to their immoveable property bearing No. 39/4, Khatha No.14826 (Sl. No.353), Doddakallasandra Village, Uttarahalli Hobli, Bangalore, Karnataka-560062 (hereinafter referred to as the "said property") by handing over the original title papers with respect to said property to the respondent No.1-Company, to secure the repayment of aforesaid loan amount with charges.

2.4. The cheques issued by the petitioners towards repayment of loan were deposited by the respondent No.1-Company in its Bank for encashment on the due date as per the repayment schedule agreed upon by the petitioners, but a number of those cheques which became due were dishonoured by the banker of the petitioners. As the post-dated cheques issued by the petitioners towards payment of the equal monthly installment were dishonoured, the respondent No.1-Company recalled the aforesaid loan facility vide legal notice dated 15th March, 2014, wherein the petitioners were called upon to pay the entire loan amount with interest and other charges as agreed in the aforesaid loan agreement amounting to Rs.1,33,60,183.63/- which was due and payable on 15th March, 2014.

2.5. The legal notice was issued to the petitioners vide registered post but the petitioners failed to clear the dues despite being served with the aforesaid notice of demand dated 15th March, 2014. Therefore, the respondent No.1-Company referred the disputes for arbitration.

3. Despite of service, the petitioners were unrepresented in the hearing held on 17th July, 2014. One more opportunity was granted to the petitioners to appear before the Tribunal and contest the case on 12th August, 2014.

4. On 12th August, 2014, the respondent No.1 appeared before the Arbitral Tribunal, however, no one appeared on behalf of the petitioners. They were ordered to be deemed served within the meaning of Section 3 of the Act. Therefore, the petitioners were proceeded *ex parte* on 12th August, 2014 due to non-appearance.

5. The respondent No.1-Company had claimed that the petitioners are liable to pay a sum of Rs.1,33,60,183.63/- along with interest @ 16% per annum, to be computed from 15th March, 2014 till the date of realization of the amounts. The respondent No.1-Company had also sought the relief, i.e. directions to the petitioners to handover the vacant peaceful possession of the said property to the respondent No.1 with further directions/permission to the said respondent to sell, transfer, and/or alienates, the said property, for the purpose of realization/satisfaction of their claims, along with costs of the proceedings.

6. *Ex parte* evidence was produced by the respondents in the arbitration proceedings. The respondent No.1-Company has filed the copy of Special Power of Attorney dated 28th October, 2013 executed by Mr.Mohit Kapoor, of the respondent No.1-Company whereby Mr.Mukesh Kumar Choudhary of

the respondent No.1-Company was authorized to pursue the proceedings on behalf of the respondent No.1-Company. The respondent No.1-Company averred that the petitioners as on 15th March, 2014 owed a total sum of Rs.1,33,60,183.63/- in furtherance of the loan disbursed by the respondent No.1-Company who has also placed on record the copy of the Loan Agreement executed between the parties along with the schedule annexed thereto. In terms of the said schedule, a sum of Rs.2,10,00,000/- was advanced by the respondent No.1-Company to the petitioners by way of loan which was repayable with interest @ 16% p.a. in 48 equal monthly installments of Rs.5,95,146/- each. The respondent No.1-Company has filed copy of a demand promissory note executed by the petitioners agreeing to pay a sum of Rs.2,10,00,000/- along with interest @ 16% p.a. Along with the above documents, the respondent No.1-Company has also filed a computerized copy of statement of account for the loan account bearing No.XMORKRM00034134 pertaining to the petitioners being maintained by the respondent No.1-Company in its books of accounts which showed the details of the honoured and dishonoured cheques issued by the petitioners towards the repayment of the loan amount and also the outstanding principal amount and the interest/other charges payable. The total amount payable as on 15th March, 2014 was shown as a sum of Rs.1,33,60,183.63/-. A copy of the legal notice issued by the counsel for the respondent No.1-Company dated 15th March, 20l4 demanding a sum of Rs.1,33,60,183.63/- due on the said date has been placed on record. In the legal notice, it has been averred that the petitioners have defaulted in payment of the EMIs on due date, as post-dated cheques issued by the petitioners were dishonoured by their banker.

7. There is no reply on behalf of the petitioners to the claims raised by the respondent No.1-Company. The witnesses of the respondent No.1-Company were not cross-examined.

8. The following Award was published in favour of the respondent No.1-Company and against the petitioners jointly and severally for –

a) Recovery of Rs.1,33,60,183.63/- on account of recovery of the outstanding principal loan amount along with contractual interest and charges;

b) Recovery of interest @ 18% p.a. on the principal amount of Rs.1,33,60,183.63/- from 15th March, 20l4 till the actual date of payment by the petitioners;

c) Recovery of costs of Rs.30,000/-; and

d) Taking appropriate legal action/proceedings to enforce/sell the Security being the property bearing No.39/4, Khatha No.14826 (Sl. No.353), Doddakallasandra Village, Uttarahalli Hobli, Bangalore, Karnataka-560062 in accordance with law for recovery of the amount as awarded in the present award. In such an eventuality, the sale proceeds would be adjusted towards the satisfaction of the amount due and payable by the petitioners under the award and the balance amount left from the sale proceeds, if any, would be returned to the petitioners. It is made clear that in case there is any shortfall, then the respondent No.1-Company would be at liberty to recover the same in accordance with law. The respondent No.1 is further directed to deduct the amount from the award amount, if any, paid by the petitioners during the arbitration proceedings, i.e. from the date of commencement till the date of Award.

9. The petitioners in the objections have taken the main ground that they were not given proper notice of the appointment of the Arbitrator and that of the arbitral proceedings. Thus, they were unable to present their case and the Award is, therefore, liable to be set aside under Section 34(2)(a)(iii) of the Act.

10. The award is in conflict with the public policy of India and on this ground also, the award is liable to be set aside, as the petitioners did not receive any intimation whatsoever from the respondent that it was initiating arbitration proceedings, or that it had appointed any Arbitrator and they have no knowledge of the present arbitration proceedings.

11. The Arbitral record was added. The same was examined by the Court. Before passing the Award, it appears from the postal receipt as well as A.D. Cards that the Arbitral Tribunal had sent the notices of intention to proceed *ex parte,* dated 17th July, 2014 which were duly despatched on 23rd July, 2014 and the same were received by the petitioners on 2nd August, 2014. Prior to that, the notices for arbitration proceedings were sent on 3rd July, 2014. The postal receipts are available on record. All A.D. Cards and postal receipts were placed on record of arbitration proceedings.

12. Therefore, the petitioners apparently are making the incorrect statements and taking false grounds.

13. The loan period/term has already been expired. The petitioner No.2 was present before the Court on 4th May, 2016 who refused to pay the due amount to the respondent No.1 and even on reasonable interest. His only

contention through counsel was that as the information of the arbitration proceedings was not given, therefore, the Award be set aside, though it was not denied by him that the petitioners were sanctioned the loan by respondent No.1 who have not cleared the dues.

14. Thus, the objections of the petitioners are false and misleading. It is admitted liability. The petitioners are avoiding payment of the same when the term has already been ended. There is no justification. The question of public policy in the facts of the present case and the nature of dispute does not arise. The objections are, therefore, dismissed.

15. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 17, 2016