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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ O.M.P.(I) (COMM.) 294/2016

ELEOS FINVESTIA ACQUISITION TRUST
THROUGH: ITS TRUSTEE .... Petitioner
Through: Mr. Rajiv Nayar & Ms. Pratibha M. Singh, Senior Advocates with Mr. Sidharth Das, Advocate.

versus

ANKUR GUPTA & ORS ..... Respondents
Through: Mr. Sandeep Sethi and Mr. Sanjeev Puri, Senior Advocates with Mr. Neeraj Sharma, Ms. Archana Lakhotia, Mr. Ravinder Prasad, Mr. Anchit Tripathi & Mr. Rushil Chandra, Advocates.

CORAM: JUSTICE S.MURALIDHAR

O R D E R
% **04.11.2016**

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (‘Act’) filed by the Petitioner, Eleos Finvestia Acquisition Trust, (EFAT) against Mr. Ankur Gupta (Respondent No. 1) and Religare Finvest Limited [RFL] (Respondent No. 2), Mr. Sunil Garg (Respondent No. 3) and Mr. Pankaj Sharma (Respondent No. 4) seeking to restrain the Respondents from alienating or transferring any assets to the extent of Rs. 1,450 crores and disposing of or alienating any assets allegedly taken from Strategic Credit Capital Private Limited (‘SCCPL’) including the shares of ABG Shipyard Limited (‘ASL’).

2. The Petitioner claims to be the successor-in-interest of SCCPL, which executed an Assignment Agreement in favour of the Petitioner on 28th June, 2016. It is claimed that the present petition has been filed by the Petitioner through its trustee, Participation Finance and Holdings India Private Limited (PFHIPL). It is claimed that SCCPL has also executed a Service Agency Agreement with PFHPL. Respondent Nos. 1, 3 and 4 are described as 'high management officials' of RFL in-charge of and responsible to RFL for its business.

3. The background to the present petition is that RFL had advanced loans to 12 entities (hereinafter referred to as 'borrowers') to the extent of Rs. 800 crores in the aggregate. These loans were assigned by RFL to SCCPL by an Assignment Agreement dated 25th July, 2015. Clause 10.7 (b) (i) of the Assignment Agreement stipulated that "till the date that the Assignor receives an amount equal to the Balance Purchase Consideration, not transfer or assign its rights, benefits or obligations under this Agreement without the prior written consent of the Assignor." A Supplemental Agreement was entered into between RFL and SCCPL on 30th December, 2015 whereby some of the terms of the Assignment Agreement were sought to be changed. *Inter alia* SCCPL agreed to pay a balance purchase consideration of Rs. 520 crores by 22nd June, 2016. Admittedly, both in the Assignment Agreement and Supplementary Agreement there was an arbitration clause where the exclusive jurisdiction was agreed to be that of the Courts in New Delhi.

4. On 9th June, 2016 SCCPL addressed a letter to RFL terminating the

Assignment Agreement as well as Supplementary Agreement for alleged reason of the said agreements being in violation of FIPB and other regulations. The above termination notice was replied by RFL on 10th June, 2016 denying the grounds of termination and reserving its right to recover the consideration payable under the Assignment Agreement at SCCPL's sole risk as to costs and consequences.

5. It appears that after the above termination of the Assignment Agreement, SCCPL and the Petitioner entered into a Service Agency Agreement on 28th June, 2016 by which SCCPL purported to assign in favour of the Petitioner the loans availed by the borrowers set out in Schedule I to the Assignment Agreement. These were the very 12 borrowers who had originally availed of loans from RFL.

6. In para 11 of the present petition, it is averred that RFL "had a portfolio of loans constituted a pool of financial assets with different borrowers which were secured by a common security, namely the shares of ABG Shipyard Limited. During the period of negotiations of the transaction, the Respondents had expressly represented to SCCPL that to their knowledge, there were no Corporate Debt Restructuring (CDR) proceedings pending as on June 2015 with ABG Shipyard Limited and the underlying equity stake of approximately 24.5% was secure in terms of dilution. The necessary implication of such express representation, was that the loans were of a performing nature not impacted by the aforementioned CDR and that there was no distress or default in the transactions." It is alleged that RFL did not disclose that any of the borrowers were, in fact, entities controlled by RFL

itself.

7. A preliminary objection raised by Mr. Sandeep Sethi, learned Senior Counsel for RFL as to the very maintainability of this petition on the ground that there was no privity of contract much less any agreement between EFAT on the one hand and RFL on the other containing an arbitration clause.

8. In response thereto Reliance was placed by both Mr. Rajiv Nayar and Ms. Pratibha Singh, learned Senior Counsel appearing for EFAT on a legal notice dated 28th June, 2016 addressed to RFL by PFHIPL alluding to a purported 'new assignment' in terms of which there was a commercial understanding "between the parties resulting in the implication of the *inter se* agreements between Participation and SCCPL." They submitted that notwithstanding the termination of the Assignment Agreement by SCCPL by its letter dated 9th June, 2016 addressed to RFL, in the absence of any reply by RFL to the legal notice issued to it on 28th June, 2016 by PFHIPL, it must be understood that RFL accepted the new assignment in terms of which the loans advanced by RFL to the 12 borrowers were assigned by SCCPL to EFAT. It is also contended that RFL did not specifically accept the termination of the Assignment Agreement by SCCPL and further accepted the Pass Through Certificates (PTC) issued by EFAT.

9. The Court is unable to accept the submissions that notwithstanding the termination of the Assignment Agreement unilaterally by SCCPL by its letter dated 9th June, 2015 the loans assigned by RFL to SCCPL could

thereafter be validly assigned by SCCPL in favour of EFAT by the Assignment Agreement dated 28th June 2016. There was no requirement that RFL should formally 'accept' the termination. The mere failure by RFL to reply to PFHIPL's letter dated 28th June, 2016 cannot possibly bring into existence an agreement between EFAT on the one hand and RFL on the other much less an arbitration agreement between them.

10. The Court is therefore not satisfied that EFAT has been able to demonstrate the very basis of the present petition under Section 9 of the Act. It is therefore not possible for the Court to entertain and grant any interim relief in favour of EFAT and against RFL and its officers.

11. Consequently, the interim order passed on 15th July, 2016 is hereby vacated. The petition is dismissed.

12. This will, however, not preclude EFAT from seeking other appropriate remedies that may be available to it in accordance with law.

13. Order be given *dasti.*

S. MURALIDHAR, J

NOVEMBER 04, 2016
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