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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 635/2016

DREAM VALLEY FARMS PRIVATE LIMITED

& ANR

..... Petitioners

Through: Mr. Vivek Kohli with Ms. Mansha
Anand, Advocates.

versus

RELIGARE FINVEST LIMITED & ORS

..... Respondents

Through: Mr. Niraj Singh, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

19.10.2016

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IA No. 12845/2016 (for exemption)

1. Exemption allowed subject to all just exceptions.

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2. This is a petition under Section 11 (6) and (8) of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioners seeking the appointment of an independent impartial and qualified Arbitrator.

3. Notice. Mr. Niraj Singh, learned counsel accepts notice on behalf of the Respondents. Although learned counsel for the Respondents sought time for filing a reply, the Court does not consider it necessary for the reason that the facts brought to the notice of the Court, as a result of the statements of the Arbitrator himself, are self evident and beyond contest.

4. One of the positive features of the amendments made to the Arbitration and Conciliation Act, 1996 ('Act') with effect from 23rd October, 2015 is the re-casting of Sections 12 and 13 of the Act. Section 12 (1) now makes it mandatory for a person who is approached in connection with his possible appointment as an Arbitrator to disclose in writing any circumstances

“(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality”.

5. Explanation I to Section 12 (1) states that “the grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.”

6. Turning to the Fifth Schedule, it is seen that it begins with the sentence “the following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators.” Clauses 22 and 24 thereof read as under:

“22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.

24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.”

7. The only exception to the above circumstances is Explanation 3 to the Fifth Schedule which states that “it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool.” It may be noted straightway that

the present dispute between the parties is about the repayment of a loan which certainly is not in the category of “maritime or commodities arbitration” requiring arbitrators from "a small, specialized pool".

8. At the very beginning, at the time of entering upon reference some time in June 2016, the sole Arbitrator, in the present case wrote to the Petitioner informing it of his appointment as such and *inter alia* made the following declaration:

“I have accepted my appointment as sole Arbitrator and have entered upon the matter. I am not aware of my circumstance nor have any interest that prevents me from arbitrating this matter. As per the term of Agreement the venue of Arbitration is at Delhi.”

9. Thereafter, on 21st June, 2016 the Petitioner wrote to the sole Arbitrator drawing his attention to Section 12 of the Act and requested him to provide a declaration in the following terms:

“(i) In how many cases has your goodself been previously appointed/nominated as an Arbitrator (either sole or nominee) of/by Religare Finvest Limited;

(ii) The present status of such previous cases, whether pending or decided;

(iii) In case of decided cases, to supply/provide an authenticated copies of the Awards so rendered;

(iv) Has your goodself previously appeared as a counsel/lawyer in any Court or Forum on behalf of the Religare Finvest Limited. If so, kindly provide the details thereof;

(v) Has your goodself at any point of time given written or oral opinion or legal advise to Religare Finvest Limited. If so, to

kindly provide the details thereof;

(vi) Any existence either direct or indirect, of any past or present relationship with or in interest in Religare Finvest Limited or in relation to the subject matter in dispute, whether financial, business, professional or other kind;”

10. The Petitioner also drew the attention of the sole Arbitrator to the Fifth Schedule to the Act as amended with effect from 23rd October, 2015.

11. By his letter dated 21st July 2016 addressed to learned counsel for the Petitioners, the sole Arbitrator made the following disclosure in the format of the Sixth Schedule where *inter alia* he stated as under:

NUMBER OF ON-GOING ARBITRATIONS:	The arbitrator is presently presiding over in 20 arbitrations out of which majority forms part of dispute in connection with group companies and majority of the matter are at the stage of appearance and completion of pleadings.
CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE.	<u>Ground 22 of the Fifth Schedule of 2015 Ordinance:</u> The Arbitrator has within the past three years never been appointed as arbitrator by one of the parties or an affiliate of one of the parties. I have been appointed as arbitrator by the Claimant very recently and earlier not acted as an arbitrator in any of the matter in the past three years.

	<u>Ground 24 of the Fifth Schedule of 2015 Ordinance:</u> The arbitrator currently serves, but not served within the past three years, as an arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties. I am not acting as an arbitrator in any of the matters filed by the Claimant on a related issue on or before June 2016.
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12. The sole Arbitrator further stated that “I further disclose that I do not fall within any of the grounds/circumstances contemplated under the Seventh Schedule (as referred in Section 12 (5) of the Act) thereby imposing a bar on my appointment/acting as Arbitrator in the present matter.”

13. On 1st August, 2016 the Petitioner then addressed another letter enquiring whether by virtue of the above disclosure whether any of the 20 arbitrations which were to be considering the disputes “in connection with the group companies”, any of them related to the Respondent herein i.e., Religare Finvest Limited.

14. Thereafter proceedings took place before the sole Arbitrator on 20th August, 2016 when he passed an order referring to the fact that the Petitioner had sent a letter dated 1st August 2016. In response thereto, in para 2 of the said order of the sole Arbitrator stated as under:

“Although the relationship is disclosed by way of earlier letter

however, it is once again clarified that I have been appointed as Sole Arbitrator on 4th June 2016 by Religare Finvest Limited in 20 matters (including the present matter). I am presently presiding in 27 arbitration matters related to Religare Finvest Limited, and majority of which are at initial stage for completion of pleadings. No judgment/award have yet been passed in any of the matters. I have never been the Arbitrator for the claimant company prior to 4th June 2016.”

15. In the very next paragraph the Arbitrator stated as under:

I have no past relationship with Claimant, i.e., Religare Finvest Limited or counsel for the Claimant prior to 4th June 2016.”

16. It is plain to the Court that the sole Arbitrator misled the Petitioner when making a declaration in the form in Schedule 6 on 21st July 2016 that he was an arbitrator in 20 matters involving ‘group companies’ when in fact he knew that he had been appointed as a sole arbitrator by the Respondent i.e. Religare Finvest Limited in 20 matters. Further, subsequently in the impugned order dated 20th August, 2016 the Arbitrator stated that “I am presently presiding in 27 arbitration matters relating to Religare Finvest Limited”

17. The above conduct of the Arbitrator in withholding at the very outset the information that he was an Arbitrator in 20 matters of the Respondent itself and instead giving a false declaration that he was involved in 20 arbitration matters involving ‘group companies’ is totally unacceptable. To compound this is his further revelation in the proceedings of 20th August 2016 that he was in fact presiding over 27 arbitration matters relating to this very Respondent i.e., Religare Finvest Limited. This conduct of the Arbitrator is

unbecoming and does not behove an Arbitrator who is expected to be impartial and independent.

18. The above misleading declaration defeats the very purpose of the amended Act which re-casts Section 12 (1) and includes the Fifth Schedule which sets out the grounds that give rise to justifiable doubts as to the independence or impartiality of the arbitrator. Two of the said grounds as set out at Item Nos. 22 and 24 (extracted hereinabove) are straightaway attracted in the facts and circumstances of the case and give rise to a justifiable doubts about the independence and impartiality of the sole Arbitrator appointed by the Respondent.

19. It was urged by learned counsel for the Respondent that with the above declaration having been made by the sole Arbitrator, it is now open to the Petitioner to challenge the Arbitrator under Section 13 of the Act and thereafter seek appropriate reliefs.

20. While in the normal course, that would be one option, in the present case not only are Clauses 22 and 24 of the Fifth Schedule attracted giving rise to justifiable doubts as to the independence and impartiality of the Arbitrator, but the conduct of the Arbitrator in seeking to mislead the Petitioner and suppress in the first instance the fact of his being a presiding Arbitrator in 27 arbitration matters relating to the Respondent smacks of dishonesty that is unbecoming of an Arbitrator.

21. The Court is satisfied that the for the purposes of Section 14 (1) (a) of

the Act the Arbitrator becomes *de jure* disqualified from continuing as an arbitrator. His mandate is accordingly terminated.

22. The Court appoints Justice P.K. Bhasin (Mobile No. 9871300032), a former Judge of this Court as a sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims of the parties. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. The requirements of the Arbitration and Conciliation Act, 1996 as amended with effect from 23rd October, 2015 shall be complied with.

23. The petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DIAC forthwith

OCTOBER 19, 2016

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S.MURALIDHAR, J