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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1836 OF 2016
IN
ARBITRATION PETITION NO. 344 OF 2015

Tata Capital Financial Services Ltd	...Petitioner
<i>Versus</i>	
RPK Jaykumar & Suja & Imayavar Amban	...Respondent

Mr SU Kamdar, Senior Advocate, with Karl Tamboly, Ashok Paranjpe, & Tushar Kadam, Jay Vakil, for the Petitioner.
Mr SP Kanuga, with SA Malkani, for Respondent No. 3.

CORAM: G.S. PATEL, J
DATED: 4th April 2017

PC:-

1. I have heard Mr Kamdar for the Petitioner. He tenders an Affidavit of Ms Sarita Kamath who is the Legal Head Pan India of the Petitioner. The Affidavit is dated 3rd April 2017. Ms Kamath's formal designation is Head Legal & Compliance with Tata Capital Financial Services Ltd (“TCFSL”).

2. The Affidavit addresses several distinct points. I will pass over paragraphs 1 and 2 which are in general terms. From paragraph 3 onwards, in this Affidavit Ms Kamath addresses various

operational and legal issues that have arisen not only in this matter but in other Arbitration Petitions filed by the Petitioner. Very broadly she states that she has ascertained the reasons for the lapse in this matter where orders were obtained after an Award was rendered but without pointing out to the Court that there was such an Award; an audit has been carried out of all other matters; and perhaps most importantly guidelines have been put in place to prevent the recurrence of such errors.

3. I will immediately grant that there can be no assurance of processes and systems being 100% error-free. That is unimportant. What matters is that there be systems in place that allow for a regular and routine audit, coordination and periodic checking.

4. In paragraph 5 Ms Kamath states of 303 matters filed in this Court by TCFSL and Tata Capital Housing Finance Ltd, a fellow subsidiary, it has been found that errors have crept in in 17 matters including the present one. A list of 13 Arbitration Petitions is annexed. These are matters where Section 9 Petitions were filed pending arbitral proceedings but in which Awards have been passed thereafter and these have not been brought to the notice of the Courts. For the remaining four matters, and these are mentioned in paragraph 6, Ms Kamath quite fairly accepts that there is a serious lapse in as much as Awards were actually passed before the Petitions under Section 9 were filed. These remained to be inadvertently disclosed and the very filing of the Petitions was, therefore, erroneous. In all four of these matters, fortunately no orders have yet been passed.

5. There is a categorical statement in paragraph 7 that there are no errors in any of the other proceedings except these 17.

6. For these 17 proceedings leave is sought in paragraph 8 to withdraw or amend these proceedings. I will permit this and I will assign a date when all 17 matters will be listed for appropriate orders.

7. Paragraphs 10 to 13 are, however, most important and I will reproduce these in full:

“10. I say that I am issuing certain Guidelines today to all the legal officers and other authorised persons handling such matters for the Petitioner on a pan India basis, for the purpose of avoiding the errors, which inter alia include:

- a) That all concerned persons shall ascertain the status of all proceedings filed (whether disposed off or pending) in respect of the case in hand, before filing any proceedings before the Hon'ble Courts or Tribunals in the same case.
- b) To co-ordinate with the concerned Advocates attending to the various proceedings in the case, for ascertaining the status of all the proceedings, from the beginning of the arbitration proceedings either before the arbitral tribunal or before the Hon'ble Court, till the file is closed by virtue of recovery of the amount of otherwise i.e. (1) arbitration proceedings (2) court proceedings (3) execution proceedings (4) proceedings before the Court Receiver or any other officer in the Filing/Account Section.

- c) If any discrepancy is found, steps must be taken forthwith to rectify it and ascertain the reason due to which any such discrepancy has arisen.

I crave leave to refer to and rely upon the Guidelines issued in this behalf and if necessary I will produce the same before the Hon'ble Court.

11. I am also constituting a team of 3 senior officers with a direction to audit the status of the pending matters on a quarterly basis and submit to me a report in that behalf.

12. I say that in the year 2016, the Petitioner took a decision to create a digital database of all of its litigation matters and also to instal a customised software application, whereby its legal officers would have access to all the necessary data pertaining to each individual matter in a systematic manner. In furtherance of this decision, the Petitioner entered into an Agreement dated 19th October 2016 with Cubictree Technology Solutions Pvt Ltd (“the software provider”). Under this Agreement, the software provider is required to provide a customised software application by virtue of which the legal department of the Petitioner will be able to better organise the data pertaining to the legal cases and access the data pertaining to each individual matter in a systematic manner. This software application is mainly for case management by the legal department. This application once operational will be used by the Petitioner's legal department as its litigation management system. The Agreement is not being annexed hereto due to a confidentiality clause therein. However, the same shall be provided to this Hon'ble Court whenever I am called upon to do the same. I shall keep a copy of this Agreement in Court on 4th April 2017.

13. Once the aforesaid software application becomes operational, which it is expected to be within the next financial quarter, all members of the litigation department of the Petitioner will be able to access the same through necessary User ID and Password.”

8. I believe this is vital and I note that there is a team of three senior officers charged with periodic checking of pending matters (on a quarterly basis) and that dedicated software to ensure systematic coordination between various sub-sections of the Legal Department is being put in place. This will undoubtedly ensure correct coordination and will be useful not only for the legal team but will also be necessary for the Advocates appearing in the matter.

9. To this I would only suggest that the two entities consider instituting a protocol whereby an updated status sheet is provided to the Advocates appearing in the matter so that they are also kept informed at various stages. I imagine there should be no difficulty in implementing this either.

10. I also note that there are apologies in the Affidavit. I will accept these though in my view they were really not necessary.

11. I express my appreciation for the prompt cooperation and positive action taken by Ms Kamath and her fellow officers.

12. The 17 matters listed at Exhibits “A” and “B” (excluding Item 11 of Exhibit “A”) to this Affidavit will be listed for orders on Monday, 11th April 2017 at 11.00 a.m. on the supplementary board.

Where amendments are required to any of the Petitions, appropriate Chamber Summonses or draft amendment applications should be kept ready so that suitable orders can be passed.

13. The Chamber Summons is dismissed as withdrawn at the request of Mr Kamdar for the Petitioner.

14. At Mr Kamdar's request, the last sentence of paragraph 4 of the order dated 29th March 2017 is expunged. That order will be uploaded afresh with the expunged sentence removed.

(G. S. PATEL, J.)