

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P. No.470 of 2017

Axis Bank Limited,
Power of Attorney Holder and
Vice President Mr.G.S.Srinivasa Sharma .. Petitioner

Versus

M/s.Nicco Uco Alliance Credit Limited .. Respondent

Prayer: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint the arbitral tribunal to adjudicate the claims and disputes between the petitioner and the respondent in pursuance of the claim made by the petitioner arising under the loan agreements executed between the parties.

For petitioner : Mr.V.V.Sivakumar

For Respondent : Mr.Karthik Mukundan

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ORDER

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Axis Bank Limited (in short 'Axis Bank'), the petitioner, seeks the appointment of an Arbitrator to adjudicate upon disputes between itself and Nicco Uco Alliance Credit Limited (in short 'NICCO') arising out of Purchase Agreement dated 15.05.2002 inter se the parties. The clause invoking which the present petition filed is as follows:

Clause 2

2.Applicable Law and Jurisdiction: This Agreement shall be governed and construed in accordance with the laws in India. The parties to this agreement hereby submit to the jurisdiction of the Courts of Chennai.

Clause 14

14.Dispute Resolution: In an effort to resolve difference and disputes arising in connection with this Agreement in an informal and amicable manner, Seller and Purchaser, as the case may be, agree to first notify the other party of any difference or dispute which requires resolution. If the parties are unable to settle the matter within 60 days after such notification, either party may commence arbitration proceedings to resolve such matter in accordance with the following:

i.Such matter shall be finally settled under the New Arbitration and Conciliation Act, 1996 by three arbitrators. The parties shall each appoint one arbitrator within 45 days of the notification of the difference or dispute. The two arbitrators appointed shall appoint a third arbitrator within 10 days of their appointment. If they are unable to agree on a third arbitrator, such third arbitrator shall be appointed as provided by the Arbitration and Conciliation Act, 1996, and the arbitrator thereby appointed shall constitute the board of arbitration. If either party fails to appoint an arbitrator within the stated time, the appointment of such party's arbitrator shall be in accordance with the Arbitration and Conciliation Act, 1996. The board of arbitration shall expeditiously hear and decide the dispute.

ii.The place of arbitration shall be Chennai.

iii.The decision and ward of the arbitrators shall be final and binding and shall be enforceable in any court of competent jurisdiction and the parties shall not dispute or question the validity of such award before any regulatory or other authority in India or elsewhere.

There shall be no appeal to any Court from the decision of the arbitrators. No party shall be entitled to commence or maintain any action in a court of law upon any matter in dispute until such matter shall have been submitted and determined as provided herein, and then only for the enforcement of such arbitration award.

iv. Pending the submission to arbitration and thereafter until the arbitrators publish their award, the parties shall, except in the event of termination of this Agreement continue to perform all of their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

v. Each party shall bear its own costs and expenses of arbitration. The arbitration provisions contained in this Article 12.14 shall survive the termination of this Agreement.

2. Axis Bank had sanctioned term loan facilities to Nicco of an amount of Rs.2393.26 vide various sanction letters. The facilities had been re-structured upon requests from Nicco, and pursuant to the re-structuring, Nicco is liable to pay to ABL, according to ABL, a sum of Rs.1158.15 lakhs at the rate of 5% of interest. Some installments were paid, but defaults occurred pursuant to the month of March 2007 and there have been no repayments thereafter. A demand was made by ABL on 24.12.2009 and since there was no response to the same, an application was filed before the Debt Recovery Tribunal (in short 'DRT') at Chennai. During the pendency of the aforesaid Original Application, Nicco moved an Interlocutory Application in terms of Section 8 of the Arbitration and Conciliation Act (in short 'the Act'), 1996 requesting the DRT to refer

the dispute to arbitration in view of the clause for dispute resolution between the parties. It thus came to be that on 05.07.2016, the DRT allowed the Original Application and referred the matter to Arbitration. A notice was sent on 08.12.2016 by the petitioner invoking the Arbitration clause. While Nicco did not dispute or contest the reference to arbitration per se, the only point of difference revolved around the place of arbitration that, according to Nicco, should be Kolkata and not Chennai.

3. Mr.V.V.Sivakumar, learned counsel appearing for the petitioner and Mr.Karthik Mukundan, learned counsel appearing for the respondent are in agreement with the existence of disputes as between the parties that are liable to be referred to and resolved by arbitration. However, Mr.Karthik would maintain that the proceedings be conducted at Kolkata pleading that Nicco would not be in a position to defend the proceedings at Chennai with the attendant costs involved.

4. Learned counsel agree, with a view to minimizing cost and in the interests of time, that the dispute be referred to a Sole Arbitrator instead of an Arbitral Tribunal comprising three Arbitrators.

5. Nicco however would continue to insist upon the proceedings being conducted at Kolkata, making a feeble attempt to distinguish between the place and seat of arbitration. This distinction however does not sur-

vive in the light of the judgement of the Supreme Court in *Indus Mobile Distribution Private Limited vs Datawind Innovations Private Limited* (2017 SCC Online 442) which obliterates the distinction between the use of the word 'place' and 'seat' in the context of section 20(1) and (2) of the Act that determines the place of Arbitration. The agreement of parties is clear to the effect that the place of arbitration shall be Chennai and as such the objection raised by Nicco in this regard is rejected.

6. Since the learned counsel appeared to be deadlock on the issue, a suggestion was made by the Court that the proceedings be conducted over video conferencing as it would be the interest of both parties and also serve to meet the ends of economy in cost as well as time. While Axis Bank appears willing to co-operate, has made enquiries of Institutions where video conferencing facilities and has confirmed availability of the same, Nicco expresses indifference even to this suggestion and is reluctant even to make this effort.

7. This petition is allowed. By consent of both parties I appoint Mr. Justice E. Padmanabhan, Former Judge of this Court as Sole Arbitrator. The place of arbitration shall, according to the agreed contractual terms, be Chennai. The parties are at liberty to explore all methods for conduct of the proceedings including Video Conferencing with the concurrence of the learned Arbitrator in this regard. The Learned Arbitrator may, upon

entering reference in the matter, issue notice to the parties and endeavour to complete the proceedings expeditiously and in any event within six months from the date of first sitting of the Tribunal. He is at liberty to fix his schedule of fees and expenses that the parties shall bear equally.

8. This petition is allowed in the above terms leaving the parties to bear their own costs.

30.10.2017

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Speaking order/Non speaking order

Index:Yes/No



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DR.ANITA SUMANTH,J.

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