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

% *Date of decision:* 20.07.2017

+ O.M.P. 775/2014

M/S NOVELTY POWER & INFRATEC LTD & ORS..... Petitioner
Through Ms.Arti Bansal, Adv.

versus

M/S S.E INVESTMENTS LTD Respondent
Through Mr.P.Nagesh and Mr.Dhruv Gupta,
Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to impugn the Award dated 21.2.2014 passed by the learned Arbitrator. The petitioner entered into an Agreement with the respondent on 3.3.2011 availing a term loan/working capital of Rs.2 crores for its business purpose. It is the case of the petitioner that the respondent agreed to sanction the said loan at the interest rate of 10.75% per annum with the collateral for securing the repayment of loan as sum of Rs.40 lacs in the form of Fixed Deposit. Said loan was available for 24 months and was to be paid in instalments. Apart from the execution of the said agreement there was a guarantee agreement wherein petitioners No. 2, 3 and 4 have given their personal guarantees.

2. Disputes having arisen between the parties, the matter was referred to arbitration. The learned Arbitrator by his Award dated 21.2.2014 has passed

an Award in favour of the respondent holding the respondents jointly and severally liable to pay the unpaid amount to the tune of Rs.1,94,03,550/- and after adjustment of the collateral security of Rs.40 lacs alongwith 9% Simple Interest accrued till 4.7.2011, the outstanding loan was to carry 22% compound interest with quarterly rest from 4.7.2011 till 3.12.2012. The respondents were directed to pay compound future interest @ 10% from 14.12.2012. Costs were also awarded of Rs.1 lakh.

3. I have heard learned counsel for the parties. Learned counsel for the petitioner submits that the entire transaction took place in Bombay but the arbitration proceedings took place in Delhi. Hence, she submits that arbitration proceedings could not have been held in Delhi and this court would have no jurisdiction. She secondly submits that the Award has granted pendente lite future interest @ 10% compound interest, which is exorbitant and illegal.

4. Learned counsel for the respondent has taken me through the arbitration agreement. In the agreement he submits that it is stated that the arbitration proceedings were to be held in Delhi. Hence, he submits that the proceedings were rightly held in Delhi. Learned counsel for the petitioner submits that he has no objection in case pendente lite future interest from the date of the Award is reduced to 12% Simple Interest from 10% compounded interest. He further submits that this submission is without prejudice to his rights and contentions and is to only sort out the matter and that there was enough justification for the learned Arbitrator to award the interest rate as given in the award.

5. Clause 20 of the loan agreement reads as follows:-

20. Any conflict, difference, controversies, or disputes arising between the parties shall be resolved amicably at the first-instance. Unresolved disputes, if any, shall be submitted/referred to the arbitration of the Sole Arbitrator. Sole Arbitrator shall be nominated/appointed by S.E. Investments Ltd. The Arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules thereunder, any amendments thereto and the language of the Arbitration shall be English. The decision/award of the Arbitrator shall be final/conclusive and binding on the parties. The venue of Arbitration shall be at New Delhi.”

6. Hence, as per the said arbitration clause the venue of the arbitration has to be Delhi. The Supreme Court in *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited & Ors.*, 2017(3) Arb.LR 1 (SC) has noted that under section 20(1) of the Arbitration Act the parties are free to agree on the place of arbitration. The Supreme Court in paragraph 14 held as follows:-

“14. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.”

7. It is manifest that the seat of arbitration as per the arbitration clause was Delhi. Hence the arbitration proceedings were rightly held in Delhi. Further, the Courts in Delhi would be the appropriate court to deal with the matter. No fault can be found in the fact that the learned Arbitrator had conducted the proceedings in Delhi.

8. As far as the issue of interest is concerned, the learned Arbitrator has noted that the present rate of interest has been increased for various loans by private banks which are charging interest valuing from 18% to 22% on

personal loans. Hence, the learned Arbitrator awarded 22% compound interest per annum with quarterly interest on unpaid loan amount. However, for pendent lite interest the learned Arbitrator has awarded a concessional rate of 10% compound interest. In view of the submission of learned counsel for the respondent the interest rate w.e.f. the date of the Award is reduced to 12% Simple Interest. There are otherwise no grounds made out to interfere in the interest rate awarded by the Arbitrator.

9. Present petition is disposed of accordingly. Pending applications, if any, also stand disposed of.

JAYANT NATH, J

JULY 20, 2017

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