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

\+ O.M.P. 687/2014

PRATAP SINGH CRANE SERVICE & ANR. ..... Petitioners
Through: Mr. M.G. Vacher, Advocate.

versus

BAJAJ FINANCE LIMITED ..... Respondent
Through: Mr. Shankar K. Sen, Advocate.

CORAM: JUSTICE S.MURALIDHAR

O R D E R

% **16.02.2017**

1. The challenge in this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act) by Pratap Singh Crane Service through its proprietor Shri Pratap Singh (Petitioner No. 1) and Shri Vinod Kumar (Petitioner No. 2) is to an Award dated 2nd June, 2014 passed by the sole Arbitrator in the disputes between the Petitioners and the Respondent, Bajaj Finance Limited, arising out of four Facility-cum-Hypothecation Agreements dated 30th October, 2011.

2. By the aforementioned agreements, the Respondent financed the purchase of four cranes which were hypothecated to it.

3. As per the agreements, the payments of instalments were to be made according to the following schedules:

(i) Rs. 1,47,375/- payable per month in 1st to 8th instalments and Rs.77,372/- payable per month in 9th to 27th instalments and Rs.1,47,375/- payable per month in 28th to 29th Instalments as agreed as per terms and conditions of the Facility cum Hypothecation No.4010CE00166684.

(ii) Rs. 42,077/- payable per month in 1st to 8th instalments, Rs.22,090/-payable per month in 9th to 27th instalments, Rs.42,077/- payable per month in 28th to 29th instalments as agreed as per terms and conditions of the Facility Cum Hypothecation NO.4010CE00166685.

(iii) Rs. 1,94,741/- payable per month in 1st to 8th instalments, Rs.49,739/- payable per month in 9th to 27th instalment, Rs.94,741/- payable per month in 28th to 29th instalments as agreed as per terms and conditions of the Facility Cum Hypothecation No.4010CE00166687.

(iv) Rs. 3,15,805/- payable per month in 1st to 8th instalments and Rs.1,65,798/- payable per month in 9th to 27th instalments and Rs. 3,15,805/- payable per month in 28th 29th Instalments as agreed as per terms and conditions of the Facility Cum Hypothecation No.4010CE00166688."

4. The Petitioners failed to make repayment of the above instalments as agreed. When the default continued despite several reminders, the Respondent recalled the loan facility. It is stated that as of 20th November, 2013, the following amounts were outstanding:

i. Rs.8,49,571 against the agreement No.6684;

ii. Rs.3,06,916 against the Facility-cum-Hypothecation agreement No.6685.

iii. Rs.7,81,052 against the Facility-cum-Hypothecation agreement No.6687.

iv. Rs.22,22,489 against the Facility-cum-Hypothecation agreement No.6688.

5. Pursuant to the arbitration clause in the agreements, the Respondent filed a petition under Section 9 of the Act. The matter was referred to the Mediation Centre, Tis Hazari Courts and a settlement was arrived at there on 9th January, 2014. However, the Petitioners were unable to adhere to the terms of the settlement. The learned Additional District Judge by an order dated 31st January, 2014 noted this and disposed of the petition filed by the Respondent.

6. Meanwhile, the disputes were referred to the sole Arbitrator. On 19th December, 2013, after noting that none was appearing for the Petitioners the learned Arbitrator set them *ex parte*. An application filed by the Petitioners for setting aside the said order was allowed by the Arbitrator on 19th February, 2014. At the arbitration hearing on 25th April, 2014, during the admission/denial of documents, the Petitioners admitted their signatures on the Loan-cum-Hypothecation Agreement, the demand note, the demand promissory note and the guarantee deed. However, despite opportunities given to them, the Petitioners did not file any documents.

7. At the meeting held on 27th May, 2014, the Petitioners filed an application under Section 19 of the Act for permission to lead evidence, which was dismissed by the learned Arbitrator on that date itself. After hearing the arguments of both parties, the impugned final Award was passed holding the Petitioners to be jointly and severally liable to pay to the Respondent the

aforementioned sums which were outstanding as on 20th November, 2013. Further, the Petitioners were held liable to pay interest at 24% per annum on the above sums for the period between 21st November, 2013 and 3rd June, 2014 and 18% per annum from 4th June, 2014 till realisation. The Respondent was held entitled to take possession of the equipments hypothecated with it and bring them to sale. Costs of Rs. 35,000 were also awarded in its favour.

8. At the hearing of the present petition on 8th July, 2014, the Court noted that the Petitioners had not challenged the rejection of their application under Section 19 of the Act by the learned Arbitrator by the order dated 27th May, 2014. Learned counsel for the Petitioners then sought leave to amend the grounds taken in the petition. This was granted by the said order and the matter was adjourned to 4th August, 2014. It appears that the Petitioners in the meanwhile, without the knowledge of the Respondent, disposed of two of the hypothecated cranes. This was taken note of by the Court in its order dated 2nd March, 2015. On the same date, the application for amendment was allowed. The Court also requisitioned the arbitral record which was thereafter received.

9. Mr. Vacher, learned counsel appearing for the Petitioners submitted that the cranes which were seized by the Respondent were worth Rs. 8.45 lakhs. He, however, alleged that the officials of the Respondent had either removed them or kept them for their own use. He submitted that the Petitioners were ready to repay the loan but because of the aforementioned conduct of the

officials of the Respondent, they did not adhere to the terms of settlement. According to him, the learned Arbitrator had no jurisdiction to continue the proceedings after the settlement. He further submitted that an application had been filed under Section 16 of the Act questioning the jurisdiction of the Arbitrator but the learned Arbitrator failed to dispose of that application.

10. In the amended petition in para 8, it is stated that the Petitioners deposited Rs. 20 lakhs with the Respondent with the understanding that the hypothecated vehicles would be released. However, there is no ground urged even in the amended petition about the Petitioners having filed any application under Section 16 of the Act which was not disposed of by the learned Arbitrator. On the contrary, there is a categorical statement in para 20 of the reply filed by the Respondent as under:

> "20.That significantly the petitioners herein have not filed any application under Sections 12 and 13 of the said Act challenging the independence and impartiality of the Learned Arbitrator. The Applicant has also not filed an application under Section 16 of the said Act challenging the existence, validity and enforceability of the arbitration agreement or assailing the jurisdiction of the arbitrator in any manner whatsoever."

11. No rejoinder has been filed by the Petitioners to counter the above statement. It is further denied that the seized goods were worth Rs. 8.5 lakhs or were misappropriated as alleged. Consequently, there was is no merit in the contention of the Petitioners that the application filed by them under Section 16 of the Act was not disposed of by the learned Arbitrator.

12. As regards payment of Rs. 20 lakhs, while the Respondent

acknowledges such payment, it is pointed out that there was no understanding that upon such payment of the said sum the seized vehicles would be released in favour of the Petitioners. There is nothing placed on record by the Petitioners to substantiate any such oral understanding.

13. The Petitioners have never disputed the fact of having entered into the aforementioned agreements or of having availed the financing facility and having defaulted in the repayment of the loans. They have also been unable to deny that they did not adhere to the terms of the settlement. The Petitioners did not have any substantive defence in the arbitration proceedings. Even before this Court, they have been unable to make out any case for interference with the impugned Award under any of the grounds under Section 34 of the Act.

14. The petition is dismissed but in the circumstances, no orders as to costs.

IA No.2183/2016

15. In view of the dismissal of the petition, the application does not survive for consideration and is, accordingly, disposed of.

S. MURALIDHAR, J.

FEBRUARY 16, 2017
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