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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 474/2016

CANDLE LIGHT HOSPITALITY PVT. LIMITED

& ORS.

.... Petitioners

Through: Mr. Prashant Kumar, Advocate.

versus

RELIGARE FINVEST LIMITED

..... Respondent

Through: Mr. Ajay Uppal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

21.02.2017

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IA Nos. 14092/2016

1. The Court is not satisfied with the explanation given for the delay of 57 days in re-filing the petition. It is accordingly stated that Petitioner No.3 was unwell and, therefore, could not come to sign the petitions. It is not understood why it is necessary for the Petitioner No.3 alone to travel to sign the petition when there are three Petitioners. One of them could sign on behalf of the others. In fact it is seen that Petitioner No.2 has been filing affidavits.

2. The application is, accordingly, dismissed.

OMP (COMM.) 402/2016 & 14093/2016

3. Nevertheless, the petition has also been considered on merits.

4. There are four grounds of challenge to the impugned Award dated 6th

May 2016. The first is that the impugned Award seeks to enforce a mortgage in favour of the Respondent of the immovable property at B-28, Mayfield Garden, Sector-51, Gurgaon when in fact there was no prayer in that regard. Reliance is placed on the decision in ***Booz Allen & Hamilton Inc v. SBI Home Finance Ltd. (2011) 5 SCC 532*** to urge that the Arbitrator could not have passed an Award in relation to the enforcement of the mortgage.

5. In reply to the above submission, Mr. Ajay Uppal, learned counsel appearing for the Respondent places reliance on a judgment of the Division Bench of this Court in ***Metal Closures Pvt. Ltd. v. Religare Finvest Limited*** [FAO (OS) (Comm.) 50/2016 decided on 7th October 2016]. The Court finds that in the said decision a similar point regarding enforcement of a mortgage not being arbitrable on the strength of ***Booz Allen*** (*supra*) was raised. However, the said plea was negated by the DB and it was held as under:

“20. There is no bar in law to the Arbitrator deciding a question of sale of mortgaged property. Further it is well settled that creation of a mortgage by depositing original title deeds is not required to be affected by a registered document. In this case, it does not appear that there were any third party rights involved. At least, there is no pleading to that effect. The award is not hit by the principles of law laid down by the Supreme Court in ***Booz Allen*** (*supra*).”

6. The Court therefore finds no merit in the first ground of challenge raised by the Petitioner.

7. It is next submitted that the learned Arbitrator who passed the impugned Award has been an Arbitrator in several cases involving the Respondent;

that he was obliged to make a proper disclosure of this fact even in terms of Section 12(1) of the Act as it stood prior to the amendment of the Arbitration and Conciliation Act, 1996 with effect from 23rd October 2015 and, therefore, the Award stands vitiated on that score.

8. It is seen that during the course of the arbitration, no application was filed by the Petitioner challenging the Arbitrator. The Petitioner raised no objection to the continuation of the arbitration by the learned Arbitrator. Even in the reply to the statement of claim, no such objection was raised. In the circumstances, the Court does not permit the Petitioners to raise such a plea at this stage.

9. The third ground of challenge is that the person who filed the statement of claim on behalf of the Respondent lacked the authority to do so. Learned counsel for the Respondent has taken the Court through the text of the Power of Attorney ('PoA') filed along with the claim in the arbitration proceedings. Clause 16 of the said PoA clearly permits the person authorised to file pleadings even in arbitration proceedings. Therefore, even this plea has no merit.

10. Lastly, it is submitted that no proper statement of accounts was produced by the Respondent in support of the amount claimed.

11. The Court notes that before the learned Arbitrator despite several opportunities the Petitioners failed to lead any evidence. The learned Arbitrator has noted this fact at several places in the impugned Award. In particular he has concluded as under:

“On the other hand apart from making vague allegations the Respondents have not placed on record any calculation and/or document to prove and/or suggest that the details given in the statement of account placed on record by the Claimant is incorrect.”

12. In para 4 of the impugned Award it is again stated “the Respondents have also failed to lead evidence by their own conduct and their right stood closed. The Claimant has placed on record the statement of the loan account and proved the same by leading its evidence.” Even before this Court, the Petitioners have not been able to show that the statement of account provided by the Respondent is erroneous.

13. The Court, therefore, finds that no grounds have been made out by the Petitioner to interfere with the impugned Award under Section 34 of the Act.

14. The petition is accordingly dismissed but in the circumstances with no order as to costs. Order *dasti*.

S. MURALIDHAR, J

FEBRUARY 21, 2017

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