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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 1631/2014

KOTAK MAHINDRA BANK LTD.

..... Petitioner

Through: Mr. Arun Aggarwal, Advocate.

versus

RAJ BABU PRADHAN @ RAJ PRADHAN & ORS. ...Respondents

Through: Mr. Sanjeev Ralli, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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17.01.2017

IA No. 13478/2016

1. This is an application by the Respondents questioning the maintainability of the present petition on the ground that no part of the cause of action has arisen in Delhi. Reliance is placed on the decision of the Supreme Court in *Apparel Export Promotion Council v. Shri Pratibha Patni, Proprietor Comfort Furnishers 125 (2005) DLT 511*.

2. The arbitration clause in the present case states that the venue of arbitration shall be Delhi. However, there is no separate clause as regards the jurisdiction. This fact makes the present case different from *Apparel Export Promotion Council v. Shri Pratibha Patni, Proprietor Comfort Furnishers (supra)*. In the said case, as pointed out by learned counsel for the Petitioner, there was a specific clause which stated *inter alia* that “only the Courts at Jaipur shall have jurisdiction.” It was in the above context that

this Court in the aforementioned decision held that merely because the venue of arbitration is New Delhi the parties shall agree to the jurisdiction of the Delhi Courts.”

3. Mr Ralli then referred to Section 2 (1) (e) of the Arbitration and Conciliation Act 1996 ('Act') and submitted that notwithstanding the decision of the Constitution Bench of the Supreme Court in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552*** this Court ought not to entertain this petition since no part of the cause of action, except the arbitration proceedings, has arisen within its jurisdiction.

4. The Court is unable to agree with the above submission. Para 96 of the decision in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (supra)*** makes it clear that:

“...both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

5. As far as the present case is concerned with the venue of arbitration being Delhi and there being no intention of the parties to exclude the jurisdiction of this Court, the contention of the Respondent that this Court lacks the territorial jurisdiction to entertain the petition is rejected.

6. The application is, accordingly, dismissed.

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7. On the previous date, Mr. Sanjeev Ralli, learned counsel for the

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Respondent had urged that since the claim together with the interest on the date of the Award was less than Rs.1 crore, the petition ought to be transferred to the appropriate subordinate court.

8. It is seen that under Section 12(2) of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('Commercial Courts Act') for determining whether the arbitration is subject to the jurisdiction of a commercial court, the aggregate value of the claim and counter-claim shall be the basis.

9. In the present case, admittedly, the claim by the Petitioner before the Arbitrator was around Rs. 67 lakhs. Mr. Aggarwal learned counsel for the Petitioner states that in the demand notice dated 22nd January, 2014, the claim raised was Rs.69,69,658 together with interest. In the Award, it is noticed that there were two accounts, namely, Loan Account Nos. 10320313 and 10320370 under two agreements both dated 21st November, 2006 whereby the total loan advanced was Rs. 68 lakhs. The Award also noticed that one of those accounts i.e., 10320370 had already been closed after the instalments were paid by the Respondent and a closure letter dated 29th August, 2011 has also been issued by the Petitioner/claimant. Therefore, the claim in the Award was confined to the Loan Account No. 10320313. As far as the said account is concerned, the Arbitrator found that there was an outstanding of Rs. 15 lakhs and that the Respondent was willing even to pay that amount. The Award, therefore, was that the Respondent would pay the Petitioner Rs. 20 lakhs with respect to the Loan Account No. 10320313 with interest.

10. Viewed from any angle, therefore, it is plain that the total amount involved is less than Rs.1 crore as far as the present petition is concerned. It is, accordingly, transferred to the court of the District Judge (Central), Tis Hazari Courts, Delhi.

11. The parties are directed to appear before the District Judge (Central), Tis Hazari Courts, Delhi on 27th February, 2017.

S. MURALIDHAR, J

JANUARY 17, 2017
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