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

+ ARB.P. 694/2016

R.P .MALHAN & COMPANY PRIVATE
LIMITED

..... Petitioner

Through: Mr Sunil Chaudhary, Advocate.
versus

KOTAK MAHINDRA BANK LTD.

..... Respondent

Through: Ms Anubhuti Chaturvedy, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.01.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the loan agreement dated 28.03.2013.

2. The said loan agreement includes an arbitration clause, which is quoted below:-

“Arbitration

Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, or any other competent authority for Debt related disputes constituted in any other law in future or which are in force, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The venue of arbitration shall be, in either Mumbai or New Delhi or Chennai or Kolkata or at the Concerned Branch at the sole discretion of

the Bank. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and the award of such Arbitrator shall be final and binding upon the Parties hereto.”

3. The learned counsel for the respondent bank does not dispute the existence of the loan agreement or the arbitration clause. He, however, submits that the disputes sought to be raised by the petitioner do not fall within the said clause inasmuch as the parties have agreed that disputes that fall within the jurisdiction of Debt Recovery Tribunal shall be excluded from the scope of the arbitration clause. He further submits that in respect of the said agreement, the respondent bank had already filed an Original Application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the same is pending. He further submits that the petitioner is resisting those proceedings before the Debt Recovery Tribunal. The learned counsel also earnestly contended that the Debt Recovery Tribunal would have the jurisdiction to entertain counter claims including for damages as are now claimed by the petitioner.

4. The arbitration clause was invoked by a notice dated 28.09.2016, which is after the introduction of sub-section 6A in Section 11 of the Act by virtue of the Arbitration and Conciliation (Amendment) Act, 2015. Thus, the only issue to be examined in these proceedings is as to the existence of arbitration clause between the parties, which in this case is not disputed. The question whether the disputes fall within the scope of the arbitration clause is a matter which would have to be considered by an arbitrator.

5. Accordingly, Justice Kailash Gambhir (Retired) (Mobile No. 9871300033) is appointed as the sole arbitrator to adjudicate the disputes between the parties subject to the same falling within the scope of arbitration clause. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

6. The parties are at liberty to approach the arbitrator for holding further proceedings.

7. The petition is disposed of.

VIBHU BAKHRU, J

JANUARY 19, 2017
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