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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1101 OF 2016

Moxie Media Pvt. Ltd. And Anr. ....Petitioners
vs
Sandeep Mahendra Bhammer ...Respondent

WITH
ARBITRATION PETITION NO.502 OF 2015

Sandeep Mahendra Bhammer ....Petitioner
vs
Moxie Media Pvt. Ltd. And 4 Ors. ...Respondents

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Mr. Suresh H. Sharma, for the Petitioners in ARBP/1101/16 and for Respondent Nos.1, 2 and 5 in ARBP/502/15.

Mr. Chirag Mody, a/w. Mr. Ashok Purohit and Ms. Dharti Pandya, i/b. Ashok Purohit & Co., for Respondent in ARBP/1101/16 and for the Petitioner in ARBP/502/15.

Mr. Shekhar Sawant, for Respondent No.4 in ARBP/502/2015.

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CORAM : S.C. GUPTE, J.

DATED: 27 NOVEMBER, 2018

P.C.:

Arbitration Petition No.1101 of 2016

. Heard learned Counsel for the Petitioners. This petition challenges an award passed by a sole arbitrator in a reference arising out of a memorandum of understanding executed between the parties.

2. The memorandum was executed on 12 February 2007. Under this memorandum, the Respondent herein agreed to invest a sum not exceeding Rs.1 crore in the Petitioner Company. Such investment was to be held as share application money in the books of the Petitioner Company till such time as the parties agree on terms and conditions of issue of shares, including the price per share at which equity shares would be issued to the Respondent. The memorandum provided that in the event no equity shares were issued or no agreement to issue equity shares was made between the parties by 31 March 2009, the Petitioner Company would return the amount received from the Respondent without interest to his bank account in the United States. It is an admitted position that neither were equity shares issued nor an agreement to issue such shares was entered into between the parties by 31 September 2009. In the premises, the Petitioner Company was obligated to refund the amount received from the Respondent without interest. Since the Petitioner Company could not refund the amount, it was agreed between the parties to treat this amount as an interest bearing loan. This agreement is reflected in a document titled as 'loan agreement' executed between the parties on 3 December 2009. The agreement recites the investment of the Respondent for issue of shares under the MOU of 12 February 2007 and the e-mails exchanged between the parties after the due date of refund of the investment under the MOU. The agreement provides for conversion of the investment by mutual consent into a loan/debt owed by the Petitioner Company described in the agreement as the 'borrower' to the Respondent described in the agreement as the 'lendor'. The Petitioner Company agreed and

undertook to repay the aforesaid loan, together with interest at the rate of 12% p.a., over a period of 15 months starting from 31 January 2010 in six quarterly installments in the manner stated under the schedule written under the agreement. The agreement had an arbitration clause in the form of clause 17. The Petitioner Company failed to repay any amount under the loan agreement and, as a result, the arbitration agreement, forming part of the loan agreement, was invoked by the Respondent and the reference was carried before the learned arbitrator. The learned arbitrator, by his impugned award, allowed the Respondent's claim for refund of Rs.99,50,000/- with interest as provided in the agreement between the parties. Accordingly, an award of Rs.1,21,25,202.74 with interest at the rate of 12% per annum from December 2009 till payment or realisation as also cost of Rs.5 lakhs to be paid by the Petitioner Company to the Respondent, was passed by the arbitrator. This award is challenged by the Petitioners in the present arbitration petition.

3. Learned Counsel for the Petitioners, firstly, submits that on or about 18 October 2012, i.e. during the pendency of the arbitration reference, the Petitioner Company issued the requisite shares to the Respondent. Neither was this fact pointed out to the learned arbitrator nor is any ground urged in that behalf in the present petition. Learned Counsel submits that the Petitioners had proposed to incorporate this ground by way of an amendment but that the chamber summons taken out by the Petitioners in that behalf was dismissed by this Court. The matter has not been carried any further by the Petitioners and rests there. In the premises, it is not permissible to the Petitioners to urge this

ground in the present petition.

4. Learned Counsel, secondly, submits that the transaction between the parties being covered under Section 12 of the Bombay Money Lenders Act, 1946, the present claim is barred. This ground was urged before the learned arbitrator and considered by him in detail. The arbitrator observed that the scrutiny of the loan agreement made it clear that the money was initially deposited as share application money and since the Petitioners had failed to issue the requisite shares or refund the amount, the loan agreement was executed. The learned arbitrator, in the premises, held the transaction as not a transaction of money lending. The learned arbitrator also considered another aspect of the matter, which makes it clear that the provisions of the Money Lenders Act do not apply to the subject transaction. The definition of 'loan' under sub-section 2(9) (ee) does not include any loan to or by or deposit with any body incorporated for the time being in force in the State; the Petitioner Company being a body corporate and the deposit being kept with it as such body corporate, the transaction was not hit by the provisions of Money Lenders Act. The arbitrator's conclusions on both these counts are perfectly legitimate and plausible findings and cannot be faulted under the challenge provisions in Section 34 of the Arbitration and Conciliation Act, 1996. Application of law by an arbitrator can neither be said to be in contravention of public policy of India nor exhibiting any patent illegality on the face of the award so long as the award exhibits a possible view of the law in the light of the contract between the parties. The impugned award clearly exhibits a possible view of the law and in keeping with the contract between the parties.

5. Learned Counsel for the Petitioners, thirdly, submits that the transaction was hit by the provisions of the master circular for foreign investment of India issued by RBI on 1 July 2011. Even this aspect of the matter was debated before the learned arbitrator. The arbitrator held that the master circular issued by RBI was of 1 July 2011, whereas the entire transaction between the parties was completed by 3 December 2009, and, in the premises, this circular was not applicable to the investment made by the Respondent. There is indeed no warrant for applying the circular retrospectively. Even this, at any rate, is a clearly legitimate and plausible conclusion and no fault can be found with it within the parameters of Section 34 of the Arbitration and Conciliation Act, 1996.

6. In the premises, there is no merit in the arbitration petition. The petiton is dismissed.

Arbitration Petition No.502 of 2015

7. The companion arbitration petition, namely, Arbitration Petition No.502 of 2015, is taken out by the original Respondent to Arbitration Petition No.1101 of 2016 and is under Section 9 of the Arbitration and Conciliation Act, 1996. Learned Counsel seeks various interlocutory reliefs under Section 9 post award. One of the prayers sought is an interim injunction restraining the Respondents from in any manner dealing with, disposing of, alienating etc. the properties, whether disclosed or not, belonging to the Respondents. There has been a

disclosure order in this arbitration petition. Two affidavits dated 12 September 2017 and 19 November 2017 have been filed disclosing the assets of Respondent Nos. 1 and 2. Since the original petition filed by the Respondent herein has been dismissed by this Court by a speaking order as above, the Petitioner herein would have to adopt steps in execution. However, with a view to enable him to do so and seek appropriate interim reliefs in such execution proceedings, interim injunction in terms of prayer clause (e) so far as the assets and properties of Respondent Nos. 1 and 2 disclosed in the two affidavits referred to above are concerned is granted for a period of six weeks from today. Learned Counsel for Respondent Nos. 1, 2 and 5 submits that Respondent No.2 has already deposited 99500 shares of the face value of Rs.10/- each with the Petitioner herein for securing the loan and that these shares are still in possession of the Petitioner. Learned Counsel submits that this fact should be taken into account whilst considering the Petitioner's application for interim relief. It is not disputed that though these shares are in physical custody of the Petitioner, there is no transfer made or transfer form executed in respect of the shares by Respondent No.2 in favour of the Petitioner. Accordingly, appropriate reliefs may be sought by either parties before the executing court and this does not reflect on the order that may be passed in the present petition. The Petitioner will be at liberty to adopt such proceedings in execution and apply for continuation of the interim injunction granted as above, as he may be advised. Arbitration Petition No.502 of 2015 is disposed of accordingly.

(S.C. GUPTE, J.)