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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.5 OF 2015

Religare Housing Development Finance Corporation India Ltd. ...Petitioner

vs

HDFC Bank Ltd. ...Respondent

.....

Ms. Anubha Rastogi, for the Petitioner.

Mr. J.P. Sen, Senior Advocate, a/w. Mr. Mohit Arora, Mr. Vinod Kothari and Ms. Sonal Sanap, i/b. Apex Law Partners, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 10 DECEMBER, 2018

P.C. :

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in a reference between the parties arising out of a memorandum of understanding executed between them on 6 February 2003 ('MOU') for transfer of the Petitioner's portfolio of loans.

2. It is the case of the Petitioner, who was the claimant before the arbitral tribunal, that by this MOU, the Petitioner had agreed to sell its loan business/portfolio to the Respondent; that the entire transfer of portfolio against payment of consideration was to be accomplished within three months of execution of the MOU; that the Respondent delayed taking various steps as required under the MOU and, by its letter

dated 5 May 2003, which was one day prior to the completion date, made various false and frivolous observations; that despite having satisfactorily dealt with these observations, by its letter dated 15 November 2003, the Respondent purported to cancel the MOU and sought reimbursement of amounts purportedly spent by it in pursuance of the MOU without any basis; and that the Respondent was liable to pay various sums aggregating to over Rs.19.44 crores, as per particulars of claim annexed to the statement of the case. The claim was resisted by the Respondent on the ground of limitation as well as on merits. The Respondent raised various counter-claims. The learned arbitrator, by his impugned award dated 22 August 2014, rejected the claims as well as the counter-claims. This award has been challenged by the Petitioner on various grounds.

3. The Petitioner's claim was rejected by the learned arbitrator on account of the bar of limitation as also on merits. So far as the bar of limitation is concerned, the learned arbitrator applied Article 55 of the Schedule to the Limitation Act. Article 55 provides for limitation for suits for compensation for breach of any contract, express or implied, not specifically provided for in the schedule. The period of limitation is three years and the time from which such period begins to run is when the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. The arbitrator noticed that the MOU in the present case was purportedly breached by the Respondent by non-completion of categorization of loan portfolios within the stipulated period of ninety days, that is to say, on 6 May 2003. The arbitrator

observed that, thus, time to take legal action against the Respondent began to run from 6 May 2003. Learned arbitrator also noted that, in any event, on 15 November 2003, the Responder had issued a notice purportedly under Clause 9.1 of the MOU treating the MOU as cancelled and demanding reimbursement of the amounts purportedly spent by the Respondent in pursuance of the MOU. The learned arbitrator held that in view of this letter of termination, which was admittedly received by the Petitioner, the time would start running at least from 15 November 2003, if not from 6 May 2003. The learned arbitrator noted that the arbitration clause having been invoked by the Petitioner on 17 February 2004, i.e. more than three years after the last of the aforesaid two dates, namely, 15 November 2003, the claim was clearly barred by limitation. The learned arbitrator's view in this behalf is clearly a possible view. The arbitrator has correctly applied the relevant Article of the law of limitation for assessing the issue of limitation. Insofar as accrual of cause of action or, in other words, time from which the limitation period begins to run, is concerned, the learned arbitrator's view that the MOU having been breached by non-completion within the stipulated period of ninety days, i.e. by 6 May 2003, and, in any event, the contract having been treated as cancelled by a notice issued under the MOU on 15 November 2003, the time began to run from 6 May 2003 or, at any rate, from 15 November 2003, is also a possible view based on the material placed before the learned arbitrator.

4. Learned Counsel for the Petitioner submits that the arbitrator has not taken into account negotiations between the parties post 15 November 2003 and the letter finally addressed by the

Respondent on 17 February 2004, by which the Respondent finally declined to accept the Petitioner's explanations vis-a-vis the alleged deficiency. Learned Counsel submits that time to take legal action against the Respondent began to run from 17 February 2004 and not from 15 November 2003. Learned Counsel also submits that, at any rate, the letter of 17 February 2004, by reason of admission of part liability by the Respondent, gives the Petitioner a fresh period of limitation of three years. The letter of 17 February 2004 cannot be treated as an act by which the contract was broken or an acknowledgement of liability on the part of the Respondent. The arbitrator's view in this behalf, i.e. not treating this date as the date of accrual of cause of action or giving a fresh period of limitation, thus, cannot be faulted.

5. Coming now to the merits of the Petitioner's claim, the learned arbitrator, in his impugned award (paragraphs 24 to 28) has come to a categorical finding that the Petitioner had not proved that the Respondent had committed any breach of the MOU. The learned arbitrator observed that, on the contrary, the Respondent had proved breach of the MOU on the part of the Petitioner. For arriving at this conclusion, the learned arbitrator referred to the relevant provisions of the MOU, in particular Articles 2.1, 2.2, 3.1 and 8 of the MOU. Relying on these Articles, the learned arbitrator held that it was the Petitioner's obligation to obtain suitable NOC/Release Letter from Regulatory Authorities and all lenders and others as applicable within thirty days and the same could be extended upto six days with the written consent of the Respondent. Learned arbitrator observed that these requisite approvals/consents were not obtained by the Petitioner even within three

months from 6 February 2003. The learned arbitrator relied on admissions of the Petitioner's own witness in this behalf. The contention of the witness that these approval/consents were required to be obtained at any time before the actual transfer of loan portfolios, was not accepted by the learned arbitrator. All these are clearly possible views, based on interpretation of contract and appreciation of evidence, both of which are clearly within the exclusive province of the arbitrator. Unless it can be shown that the findings of the arbitrator in this behalf are either impossible or such that no fair or judiciously minded person could have arrived at or as would shock the conscience of the Court, the interpretation of contract or appreciation of evidence are not amenable to any challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

6. The learned arbitrator in his impugned award has also dealt with each of the Petitioner's claims separately so as to consider the entitlement of the Petitioner for each of these claims. The learned arbitrator held that the Petitioner had failed to prove these claims, in particular, the alleged loss of Rs. 4 crores suffered by the Petitioner in consequence of an alleged breach of MOU on the part of the Respondent or the three claims of Rs.80,00,000/-, Rs.10,00,000/- and Rs.2, 28,000/- aggregating to Rs.92,28,000/- towards expenses as suggested by the Petitioner. The arbitrator noted that there was no material placed on record by the Petitioner to prove these claims. Learned Counsel for the Petitioner submits that there was material produced in this behalf by the Petitioner but that it was not considered by the learned arbitrator to be sufficient. Sufficiency or otherwise of the evidence is clearly for the

arbitrator to decide. Unless the arbitrator comes to a perverse conclusion in that behalf, the award cannot be faulted. There is nothing to suggest that the arbitrator's conclusions in this behalf are perverse, considering the measures of perversity discussed by the Supreme Court in the case of **Associate Builders vs. Delhi Development Authority**[1]**.**

7. In the premises, there is no infirmity in the impugned award within the parameters of the grounds of challenge available under Section 34 of the Arbitration and Conciliation Act, 1996. The petition is, thus, dismissed.

(S.C. GUPTE, J.)

1 (2015) 3 Supreme Court Cases 49