IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

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THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.350 of 2013

1.M/s Basarass biocon India P. Ltd.,
No.9/A,6th Main Road, Sri Iyyappa Nagar,
Virugambakkam, Chennai-600 092.

2.Murugadoss O.R.
No.4/1, 2nd Cross Street,
1st Main Road, Natesan Nagar,
Virugambakkam, Chennai-600 092. ..Petitioners

Vs.

1.M/s Kotak Mahindra Bank Ltd.,
1st floor, Ceebros Centre,
No.39, Montieth Road,
Egmore, Chennai-600 008.

2.R.Hamsaveni,
No.77/155, 4th Floor,
Broadway Road,
Opp. To Police Quarters Bus Stop,
Chennai-600 108 .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitration Award dated 05.01.2013.

For Petitioners : Mr.G.B.Sabari Das

For Respondents : Mr.Nathan & Associates for R1

ORDER

A personal loan cum guarantee Agreement was entered into between the first petitioner and the first respondent on 26.03.2008. The first respondent advanced a sum of Rs.10 lakhs by the aforesaid agreement. Since the equal monthly instalments were not paid as per the terms of the agreement and cheques got bounced, a claim was made by the first respondent. The first respondent has filed Exs.A1 to A5, which include loan recall notice and the statement of accounts.

2. Notices issued by the Arbitration Tribunal were received. Counter statements have been filed by the petitioners. Before the Tribunal, the petitioners contended that as per the CIBIL Report, the amounts have been paid.

3. The Tribunal recorded a finding accepting the case of the first respondent that intimation was given to the petitioners about the procedures to be followed for the cancellation of the monthly ECS cheques, but the petitioners did not respond. It was held that CIBIL Report would not display the interest part and penal charges. The claim was made as

per Clause 2.6 of the agreed terms. A further finding has been given as per Ex.A5. The first respondent was maintaining the accounts of the petitioners by giving due credit to the payments made. It was further held that nearly 27 EMI cheques were bounced resulting in belated payment of loan instalments and therefore, the claim was correctly made seeking payment for overdue charges, collection charges, cheque bouncing charges and interest for belated payment in terms of Clause 2.6 of the agreement. Resultantly, a sum of Rs.3,37,699/- was directed to be paid by the petitioners with interest.

4. The learned counsel appearing for the petitioners would submit that CIBIL Report would indicate the payments having been made. Since payments have been made through ECS cheques, there is no question of making any claim otherwise. There cannot be any liability to be fastened on the second petitioner in his individual capacity being the Managing Director of the first petitioner.

5. The learned counsel for the first respondent would submit that the award having been passed based upon Ex.A5, which is not found to be incorrect, no interference is required.

6. On the issue of implicating the second petitioner, this Court finds considerable force in the submission of the learned counsel for the petitioners. The second petitioner would become liable in his capacity of Managing Director alone and not in his personal capacity. On merit, the first petitioner is liable to pay the said amount. There is no dispute on the factum of bouncing of the cheques and the belated payments. Clause 2.6 of the agreement would certainly govern the case. The petitioners were already informed by the first respondent about the procedure to be followed. CIBIL Reports cannot form the basis as they do not indicate the interest part and penal charges. As long as Ex.A5 is not in dispute, the consequence would follow.

7. In such view of the matter, this Court does not find any reason to interfere with the well merited award passed by the learned Arbitrator in exercise of the power under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the award stands set aside insofar as the second petitioner is concerned, fixing the liability in his personal capacity.

8. One more submission has been made by the learned counsel for the petitioners that exhibits have not been served on the petitioners. This Court does not find any merit in the said contention and the same

cannot be accepted. It is for the petitioners to ask for the exhibits if not served. The petitioner did not ask for them before the Tribunal. Admittedly, the petitioners have filed the counter affidavit. Hence, the said contention is rejected.

9. A further contention raised by the learned counsel for the petitioners is that the interest awarded is excessive. This Court finds some force in the submission. Taking into consideration the law laid down by the Apex Court, this Court is of the view that in the interest of justice, the rate of interest fixed at 18% has to be reduced. Accordingly, the award stands confirmed as against the first petitioner alone. Insofar as the second petitioner is concerned, the award stands set aside and he is not liable to make any payment as the loan was obtained in his capacity as Managing Director alone.

10. The interest awarded by the Tribunal stands modified from 18% to 12 % per annum. In all other respects, the award is confirmed. Accordingly, original petition stands dismissed. No costs.

05.01.2018

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M.M.SUNDRESH,J.

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