

*** HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

+ ARBITRATION APPLICATION No.94 OF 2012

% Date: 03-08-2018

Srikanth Vairagare .. Applicant

v.

\$ M/s.ICICI Bank Limited., & 3 others .. Respondents

! Counsel for the Applicant : Sri V.Hari Haran

^ Counsel for respondent Nos.1 and 2 : Sri N.Harinath

Counsel for respondent No.3 : Sri V.Nitesh

Counsel for respondent No.4 : Sri B.Nalin Kumar

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. [2012] 173 CompCas 476 (Cal)
2. W.P.No.6409 of 2010 before the High Court of Bombay

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.94 OF 2012

ORDER:

Certain aspects of the provision for arbitration in the Credit Information Companies (Regulation) Act, 2005; hereinafter referred to as 'the Act', for short; arises for consideration in this case.

2. The fourth respondent is the Reserve Bank of India (RBI) constituted under Section 3 of the Reserve Bank of India Act, 1934; hereinafter referred to as 'RBI Act', for short. The third respondent is a 'credit information company'; for short, 'CIC'; as defined in Section 2(e) of the Act. Respondents 1 and 2 collectively, is a 'credit institution' as defined in Section 2(f) of the Act. The applicant, having been using a credit card issued by respondents 1 and 2 is the one, who falls within the term 'borrower' under Section 2(b) of the Act.

3. Detailing different aspects touching transactions as between him and the credit institution, the applicant pleaded that the third respondent CIC has erroneously and without verification of any details, included false information as furnished by the credit institution, regarding the applicant. Making reference to the different transactions as between the applicant borrower and the credit institution relating to a credit card, the applicant has made allegations against the respondents 1 and 2 in their dealings as a credit institution. In paragraph 13 of the Application, it is pleaded by the applicant that there is deliberate failure on the part of the credit institution to amicably solve the issue and it is therefore that he sought for appointment of an arbitrator to adjudicate the issue. He has pleaded that there were certain proceedings before the Banking Ombudsman and also that the applicant had elicited information

invoking the provisions of the Right to Information Act. On the aforesaid premise, the application is filed invoking Section 18 of the Act read with Section 11(6) of the Arbitration and Conciliation Act, 1996; 'the A&C Act', for short".

4. The fourth respondent RBI has pleaded and placed on record materials to the effect that there is no dispute that could be referred for arbitration under the Act and that it had informed the applicant that an arbitrator cannot be appointed in relation to the matters sought to be raised by the applicant, as disputes between him and the credit institution. The third respondent CIC has filed counter affidavit denying the allegations made against it by the applicant and pleading that any dispute as between the applicant as a borrower and the credit institution is not a dispute that would fall under Section 18 of the Act for settlement in terms thereof read with the provisions of the A&C Act.

5. The learned counsel for the applicant, making reference to the Judgment of the High Court of Calcutta in **Sunil Agarwal vs. LIC Housing Finance Limited**¹, argued that the application is eligible to be allowed in terms of Section 18 of the Act read with Section 11(6) of the A&C Act. Per contra, the learned counsel for the fourth respondent referred to the Judgment of the Division Bench of the High Court of Bombay in **DSL Enterprises Private Limited vs. the Chief General Manager, DBOD, Reserve Bank of India** (W.P.No.6409 of 2010) and argued that a dispute between the borrower and the credit institution which does not relate to the business of CIC is not to be subjected to the procedure for settlement under Section 18 of the Act,

¹ [2012] 173 CompCas 476 (Cal)

though the provisions of the A&C Act are incorporated by reference through that provision of the Act.

6. The Credit Information Companies (Regulation) Act, 2005 was enacted to provide for regulation of CICs and to facilitate efficient distribution of credit and for matters connected therewith or incidental thereto. 'Credit information company' is defined in Section 2(e) of the Act, to mean a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (2) of Section 5 of the Act. The Reserve Bank of India is the authority to grant certificate of registration under Section 5 of that Act. The grant of certificate of registration enables the CIC to commence and carry on the business of credit information.

7. Chapter V of the Act deals with functions of CICs. Section 14 falling in that Chapter, enumerates the functions of a CIC. Sub-section (2) of that Section inhibits every CIC from engaging in any form of business other than those referred to in sub-section (1) of Section 14 of the Act.

8. Sub-section (1) of Section 14 of the Act enumerates the functions of a CIC, which reads as follows:-

14. Functions of a credit information company.-

(1) A credit information company may engage in any one or more of the following forms of business, namely:-

- (a) to collect, process and collate information on trade, credit and financial standing of the borrowers of the credit institution which is a member of the credit information company;
- (b) to provide credit information to its specified users or to the specified users of any other credit information company or to any other credit information company being its members;
- (c) to provide credit scoring to the specified users or specified users of any other credit information company or to other credit information companies being its members;
- (d) to undertake research project;

- (e) to undertake any other form of business which the Reserve Bank may, specify by regulations as a form of business in which it is lawful for a credit information company to engage.

Clauses (a) to (c) of sub-section (1) of Section 14 of the Act would show that the activities of the CIC in relation to those clauses commence with the collection of information on trade, credit and financial standing of the borrowers of the credit institution, which is a member of the CIC. Sub-section (1) of Section 17 of the Act is the statutory authorization for the CIC to require its members to furnish such credit information as it may deem necessary, in accordance with the provisions of that Act. Sub-section (2) of Section 17 of the Act obliges the members of the CIC to provide credit information in response to the notice. Sub-section (4) of Section 17 of the Act inhibits, among other things, the disclosure of credit information by the CIC to any person other than its specified user, that is to say, those who fall within the definition of 'specified user', in clause 2(l) of the Act. Thus, it can be seen that the business of the CIC as permitted by Section 4 of the Act is based on the credit information provided by a credit institution which is its member. Even in cases where such information is elicited by the CIC in furtherance of a notice under sub-section (1) of Section 17 of the Act, the business of credit information of the CIC with reference to clauses (a) to (c) of Section 14(1) of the Act commences only with the collection of information given by the credit institution. The CIC then processes and collates such information on trade, credit and financial standing of the borrowers of the credit institution providing such information. There upon, it provides such credit information to its specified users. It also provides credit scoring to the specified users. This is the

manner in which clauses (a) to (c) of sub-section (1) of Section 14 of the Act regulates the business of the CIC.

9. Thus, the business of credit information, in terms of clauses (a), (b) and (c) of sub-section (1) of Section 14 of the Act, depends upon the credit information given to the CIC by the credit institution. It does not relate to any matter which is beyond the purview of that information, which is furnished by the credit institution to the CIC. As a necessary corollary, this would mean that any dispute between the borrower and the credit institution in relation to the credit information provided by the credit institution to the CIC is not one that would relate to the business of credit information, which a CIC may engage in, in terms of sub-section (1) of Section 14 of the Act.

10. Sub-section (1) of Section 18 of the Act, which is relevant in the context, reads as follows:-

18. Settlement of dispute.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that act shall apply accordingly.

(emphasis supplied)

Section 18 of the Act is a mechanism for settlement of disputes relating to business of credit information. It does not relate to settlement of any dispute as between the borrower and the credit institution in relation to the credit information given by the credit institution to the CIC, including the correctness or otherwise of such information. This will be the legal position also in relation to any dispute as between a 'client' as defined in Section 2(c) (which is an

inclusive definition) of the Act and the credit institution. Section 18 of the Act would apply only when dispute arises on matters relating to business of credit information. A dispute between the borrower and credit institution, including any dispute as to the correctness or otherwise of the credit information given by the credit institution to the CIC, is not a dispute relating to the business of credit information. Section 18 of the Act can be invoked only as regards disputes relating to the business of credit information; that too, for which there is no remedy provided under the Act. Only such disputes could be carried for settlement by conciliation and arbitration in terms of the provisions of the A&C Act by invoking Section 18 of the Act.

11. In view of the aforesaid, based on the interpretation of the provisions of the Act, I would follow the decision of the Division Bench of the Bombay High Court in **DSL Enterprises Private Limited** (supra). The decision of the Calcutta High Court in **Sunil Agarwal** (supra) rests on different and peculiar facts of that case and does not provide any *ratio decidendi* which could be applied to the issues of law, in hand.

12. For the aforesaid reasons, this request filed invoking Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Section 18 of the Credit Information Companies (Regulation) Act, 2005 fails.

In the result, the Arbitration Application is dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

03.08.2018

Note: LR copy be marked.
(By order)
pln