$~19

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

\+ **<u>O.M.P. (COMM) 79/2018 and IA No. 2383/2018</u>**

MAISANG PRODUCTS PVT. LTD. & ORS. ..... Petitioners
Through: Mr Aaditya Vijay Kumar and Ms Liza Baruah, Advocates.

versus

SMALL FARMERS AGRIBUSINESS CONSORTIUM LTD.(SF AC) ..... Respondent
Through: Mr Dalip Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **12.03.2018**

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 04.09.2017 (hereafter 'the impugned award'). The impugned award was rendered in the context of the disputes that had arisen in respect of an agreement dated 13.03.2007 (hereafter 'the Agreement') entered into between petitioner no.1 (hereafter 'MPPL') and Small Farmers Agribusiness Consortium (hereafter 'SFAC').

2. In terms of the Agreement, SFAC had granted Venture Capital Assistance of a sum of ₹75 lacs to MPPL. The principal dispute between the parties involved interpretation of Clause 3 of the Agreement, which provided that the Venture Capital Assistance would be "*deemed to be a loan from the date the Lending Bank has actually recovered its term loan or on the schedule end dated of term loan, whichever is earlier*".

3. This was in the context of the EXIM Bank (the lending bank) having extended a term loan to MPPL. SFAC would be entitled to recover the Venture Capital Assistance (VCA) provided to MPPL after the EXIM Bank had recovered the term loan or after the *schedule end date* of the said term loan.

4. The dispute between the parties arises in the context of the EXIM Bank extending the period of the term loan. In the circumstances, the petitioners claimed that the VCA could not be deemed to be a loan – any thereby immediately recoverable by SFAC – as the schedule end date of the term loan had been extended on account of the EXIM Bank extending the tenure of the term loan. According to the petitioners, the VCA would be deemed to be a term loan only after the extended schedule end date had expired. SFAC disputed the same. It contended that the Venture Capital Assistance would be recoverable as a deemed loan after expiry of the original end schedule date of the term loan; that is, without taking into account the extension in term of the said loan.

5. The Arbitral Tribunal had accepted the contention as advanced on behalf of SFAC. The challenge laid to the impugned award on the said interpretation was considered by this Court and was rejected by an order passed on 20.02.2018.

6. The only controversy that remained to be addressed was whether the Arbitral Tribunal had any jurisdiction to make an award against petitioner nos.2 and 3. The learned counsel appearing for SFAC submits that the award would also bind petitioner no.2 and 3 inasmuch as the enclosure to the

Agreement includes reference of a security of an immovable property, which is in the name of petitioner no.2. He submitted that since MPPL had offered an asset belonging to petitioner no.2 as a security, petitioner no.2 would also be bound by the impugned award.

7. The above contention is unmerited. A plain reading to the Agreement clearly indicates that it was only entered into between the MPPL and SFAC. Petitioner no.2 has also signed the Agreement only on behalf of MPPL as its Director and not in his individual capacity.

8. Indisputably, there is no arbitration agreement in writing between petitioner nos.2 & 3 and SFAC. Therefore, the Arbitral Tribunal could not have made an award against petitioner no.2 and 3.

9. In view of the above, the arbitral award, to the extent that it has been passed against petitioner nos.2 and 3, is set aside.

10. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 12, 2018
RK