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

\+ **FAO(OS) (COMM) 164/2018**

Date of decision: 1st August, 2018

M/S PAISALO DIGITAL LTD .... Appellant

Through Mr. P. Nagesh, Advocate.

Versus

M/S JAY POLYCHEM (INDIA) LTD & ORS ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

M/s. Paisalo Digital Ltd., formerly known as S.E. Investments Ltd., has filed the present intra-Court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (A & C Act, for short) read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

2. Impugned order dated 7th May, 2018 dismisses the objections filed by appellant under Section 34 of the A & C Act, challenging the award dated 31st July, 2015 passed by the sole Arbitrator Mr. Justice S.B. Sinha, former Judge of the Supreme Court of India.

3. Appellant a non-banking financial company engaged in the business of lending money on interest had entered into five loan agreements, all dated 29th August, 2011 with M/s. Jay Polychem (India) Ltd ("respondent company"). M/s Jay Tel Mobile Private Limited, Sandeep Singh Madhok

and Satinder Singh Madhok, Respondent Nos. 2 to 4 in the present appeal stood as guarantors.

4. Appellant had claimed that they had granted loan/finance of Rs.20,00,00,000/- to be repaid in twenty-four monthly installments commencing from 30.08.2011 at flat rate of 10.75%, equivalent to annualised rate of 23.59% on reducing balance.

5. However the actual amount disbursed was Rs. 6,00,00,000/- on 30.08.2011 and 12,56,44,000/- i.e. Rs. 18,56,44,000/-. Rs. 1,21,50,000/- and Rs. 22,06,000/- were deducted at the time of disbursal itself on account of first monthly instalment and processing charge respectively. Further, the borrower i.e. the first respondent company had remitted Rs.5,00,00,000/- by RTGS to the appellant statedly as cash collateral, which was to carry interest at the rate of 9% per annum.

6. Arbitral Tribunal examined the loan agreements and the factual matrix that had emerged. Considering the material and evidence on record the Arbitral Tribunal upheld the plea of the respondents that the actual sum given as loan was Rs.15,00,00,000/- and amount of Rs.5,00,00,000/- remitted to the appellant on 30.08.2011 purportedly as cash collateral should be treated as repayment of loan and adjusted from the amount disbursed. Thus the appellant had advanced loan of Rs.15,00,00,000/- and not Rs.20,00,00,000/-.

7. In our opinion, learned single Judge vide impugned order had rightly refused to interfere with the award and the findings recorded therein in view of the limited scope and jurisdiction of the Court of reappraisal on merits. The Award is detailed and elaborately refers to the documentary

material and oral evidence to opine on the said aspect of the dispute. The decision of the Arbitral Tribunal on the question and issue was just, fair and reasonable. It does not warrant interference and modification in exercise of power of judicial scrutiny under Section 34/37 of the A & C Act.

8. Issue had also arisen on the rate of interest and levy a late fee charge of Rs.2/- per thousand per day enhanced to Rs.6/- per thousand per day. Arbitral Tribunal had awarded *pendente lite* interest @ 15%. Learned Single Judge has modified the award directing that *pendente lite* interest would be payable @ 23.59% per annum. We are not required to examine and consider the said modification in the present appeal.

9. No other argument and issue is raised.

10. Recording the aforesaid position, we dismiss the appeal without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 01, 2018
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