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

\+ **O.M.P. (COMM) 407/2017**

AKSHAY GIRJASHANKAR MEHTA ..... Petitioner

Through Mr Jay Savla, Mr Rajpal Sigh, Ms Shilpi Chowdhary, Advocates.

versus

S. E. INVESTMENTS LTD & ANR. ..... Respondents

Through Mr P. Nagesh, Mr Nishant Tyagi, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **21.05.2018**

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 15.06.2017 (hereafter 'the impugned award').

2. The impugned award was rendered in the context of the disputes that have arisen between the parties in connection with the two loan agreements dated 28.12.2010. The said loan agreements – LD 2449 for a sum of ₹2.50 crores and LD 2450 for a sum of ₹2.30 crores – were entered into between respondent no.1 (SEIL) and M/s Mission Vivacare Limited (respondent no.2 – hereafter 'the Borrower'). The petitioner herein stood as a guarantor for due repayment of the amount dues from the Borrower under the said loan agreements.

3. There is no dispute that the borrower has defaulted in repaying the amounts due under the said loan agreements and, in this context, the petitioner filed its claims before the Arbitral Tribunal. The claims included, Late Payment Charges calculated at the rate of ₹2 per thousand rupees per day, *pendente lite* interest and future interest.

4. By the impugned award, the Arbitral Tribunal has accepted the claims made by SEIL and has awarded an aggregate sum of ₹8,80,06,616/- along with future interest at the rate of 18% per annum compounded with monthly rests. In addition, the Arbitral Tribunal has also awarded costs of ₹1,50,000/- in favour of SEIL.

5. The learned counsel appearing for the petitioner has assailed the impugned award essentially on three fronts: first, relates to the decision of the Arbitral Tribunal to deny a credit of ₹1,30,00,000/- on account of transfer of immovable property; second, relates to the levy of Late Payment Charges at the rate of ₹2 per thousand rupees per day; and the third, relates to the computation of the contractual rate of interest.

6. Mr Savla, the learned counsel appearing for the petitioner submitted that in terms of an understanding entered into between the parties (MoU dated 09.01.2012), the lease for an immovable property was transferred by the Borrower to M/s Nivedita Pharma Pvt. Ltd (hereafter 'Nivedita'). He submits that in view of the said agreement, SEIL had agreed to give credit of ₹1,30,00,000/- to the Borrower for discharge of its loans. He submits that the Arbitral Tribunal has rejected the petitioner's claim for the said credit on the ground that the marketable title was not transferred to Nivedita. However, the Arbitral Tribunal has ignored the fact that the Borrower had

also executed a power of attorney in terms of the said MoU in favour of the persons authorized by SEIL and, therefore, had effectively divested itself of further responsibility to ensure that the lease is transferred in the books of the lessor (Maharashtra Industrial Development Corporation – MIDC).

7. After some arguments, Mr P. Nagesh, the learned counsel appearing for SEIL stated that SEIL would be willing to give the said credit to avoid any further controversy regarding the said issue. The only question that would require to be addressed in this regard is whether the said credit ought to be given in January, 2012 or in July, 2012. According to the petitioner, the said credit should be available in January, 2012 since the Power of Attorney was executed in January and the Stamp Papers were purchased by Nivedita in January. According to SEIL, the document for transfer of the rights from Nivedita was registered in July and, therefore, the credit can only be given on that date.

8. The second issue relates to the Late Payment Charges which have been awarded in favour of SEIL. According to the petitioner, the said charges are excessive and are in the nature of penalty. Admittedly, this issue stands covered by the decision of this Court in ***Shakuntla Educational and Welfare Society & Ors. v. S.E. Investments Ltd.: OMP (Comm) 194/2017 decided on 29.05.2017*** and Mr Nagesh fairly concedes that Late Payment Charges would not be payable.

9. The third issue raised by the learned counsel for the petitioner relates to the payment of interest. Admittedly, the petitioner would be liable to pay the contractual rate of interest, which is specified at 10.75% *flat*. This means that the Borrower would be liable to pay the said interest without accounting

for the instalments paid during the contractual period. According to the Arbitral Tribunal, the said rate of interest works out to be 25.62% per annum on a reducing balance method basis. However, the method by which this calculation has been arrived at is not discernible from the impugned award. Thus, the question as to what would be the rate of interest on the reducing balance basis remains a contentious issue. However, there is no dispute that the petitioner would be liable to pay the contractual rate of interest till the debt is discharged.

10. At this stage, the parties agree that the aforesaid contentious issues be resolved through arbitration. The impugned award to the aforesaid extent, namely, (i) the decision as to the availability of credit of ₹1,30,00,000/-; (ii) award of Late Payment Charges to the extent in exceeds the contractual rate of interest; and (iii) the determination of the contractual rate of interest on reducing balance basis equivalent to 10.75% p.a. flat for a period of one year, is set aside.

11. With the consent of the parties, Ms Kiran Kalra, Advocate is appointed as the sole arbitrator to adjudicate the specified disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.

12. The Arbitral Tribunal shall adjudicate the following issues:

(i) Which is the date from which the credit of ₹1,30,00,000/- ought to be made available to the petitioner;

(ii) What is the rate of interest on reducing balance basis equivalent to the contractual rate of interest; and

(iii) What is the amount due from the petitioner considering the above issues, the impugned award and the observations made in this order.

13. The parties are at liberty to approach the arbitrator for further proceedings.

14. The above order is passed with the consent of the parties.

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

VIBHU BAKHRU, J

MAY 21, 2018

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