

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 1435 OF 2019

Oriel Financial Solution Private Ltd	...Petitioner
<i>Versus</i>	
ICICI Bank Limited	...Respondent

Mr Kamal Sehgal, *with Saurabh Bachhawat and Charanji Lal, i/b*
Yashvi Panchal, for the Petitioner.
Mr Ayush Agarwal, *for Respondent No 1.*

CORAM: G.S. PATEL, J.
DATED: 3rd December 2019

PC:-

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act 1996.

2. A statement is made by the learned advocate for the Respondents on instructions that pending an arbitration between the parties the respondents will not proceed with the closure of the petitioners' current accounts. The statement is noted and accepted as an undertaking to the Court.

3. There is no dispute about the arbitration clause at page 70, clause 7, which reads thus:

“7. Governing Law and Arbitration

(a) The provisions of this Agreement shall be governed by and construed in accordance with Indian Law.

(b) (i) Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

(ii) The dispute, controversy or claims arising out of or in connection with the Agreement shall be referred to three arbitrators out of which each party shall appoint one arbitrator and such (two) arbitrators shall then appoint a third arbitrator.

(iii) The place of arbitration shall be Mumbai and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made, in Mumbai.

(iv) The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian law.

(v) The award of the arbitrator shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled (but not obliged) to enter judgment thereon in any one or more of the highest courts having jurisdiction. The Parties further agree (to the maximum extent possible and allowed to them) that such enforcement shall be subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 and neither Party shall seek to resist the enforcement of any award in India on the basis that award is not subject to such provisions.

(c) The rights and obligations of the Parties under, or pursuant to, this Section, including the arbitration agreement in this Section, shall be under the exclusive jurisdiction of the courts located at Mumbai.”

4. Parties leave the nomination of a sole arbitrator to the Court. I nominate Mr JP Sen, learned senior advocate, is appointed as a learned sole arbitrator to decide the disputes and differences between the parties.

(a) **Appointment of Arbitrator:** Mr JP Sen, learned Senior Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from today of the order being uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr JP Sen, Senior Advocate**

Address MB House, 1st floor, 79,
Janmabhoomi Marg, Fort.
Mumbai 400 001

Mobile 9820070691
Email jpsen1@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of

section 16 of the Arbitration Act. All contentions are left open.

(g) Interim Application/s:

- (i) Liberty to both sides parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.
- (ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

(h) Fees: The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(i) Sharing of costs and fees: Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.

(j) Consent to an extension if thought necessary. Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(k) Venue and seat of arbitration: Parties agree that the venue and seat of the arbitration will be in Mumbai.

5. The commercial arbitration petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)