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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION NO. 50 OF 2019

The Cosmos Co-op. Bank Ltd. ...Petitioner.

vs

M/s Anoushka Medicare & Diagnostics Pvt. Ltd. ...Respondent.

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Mr Rishabh Shah a/w Ms Fatima Barodawalla I/b Raval Shah for the Petitioner.

Mr Virag Tulzapurkar, Sr. Advocate I/b Mandar Soman for the Respondent.

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CORAM : B.P.COLABAWALLA, J.

JANUARY 29, 2019.

P.C. :

Admit. By consent of parties the Petition is taken up for hearing and final disposal.

2 By this Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), the Petitioner – bank challenges the order passed by the Arbitral Tribunal dated 3rd August, 2018 and 23rd October, 2018 in the pending arbitration proceedings. The order dated 3rd August, 2018 was passed by the Arbitrator at the instance of the Respondent - claimant restraining the Petitioner – bank from taking any coercive steps against the Respondent - claimant for recovery of the loan. In effect, this order of the Tribunal restrained the Petitioner - bank even from initiating the proceedings under the SARFAESI Act, 2002. Since this order was passed ex-parte

and without hearing the Petitioner – bank, an application was moved for recall of this order. This application is dated 5th October, 2018. It is in this application that the Tribunal passed the order dated 23rd October, 2018 whereby the application of the Petitioner – bank was rejected.

3 I have heard Mr Shah, learned advocate appearing on behalf of the Petitioner – bank as well as Mr Tulzapurkar, learned senior counsel appearing on behalf of the Respondent (the claimant before the Arbitral Tribunal). Mr Tulzapurkar, contended that the Arbitral Tribunal was fully justified in restraining the Petitioner – bank from taking any coercive action (and which would include the proceedings under the SARFAESI Act, 2002), in view of the express undertaking given by the Petitioner – bank in its letter dated 22nd January, 2018. In this letter, and which is addressed to the Joint Secretary of the Central Government of India and the Central Registrar of Co-operative Societies, Ministry of Agriculture and Farmers Welfare, the Petitioner – bank assured that no action would be taken *inter alia* against the Respondent - claimant till the final orders are passed by the Arbitrator.

4 Though there may be some merit in the arguments

canvassed by Mr Tulzapurkar, I find that the order dated 3rd August, 2018 could not have been passed by the Arbitrator under Section 17 in view of the express bar contained in Section 34 of the SARFAESI Act, 2002. Section 34 of the SARFAESI Act, clearly stipulates, that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act.

5 This being the clear position in law, though there may be some merit in the arguments canvassed by Mr Tulzapurkar, the question that still arises is whether the Arbitrator could have restrained the Petitioner – bank from exercising its power under the provisions of the SARFAESI Act, 2002. To my mind, in view of the express provisions of Section 34 of the SARFAESI Act, 2002, the Arbitrator could not have restrained the Petitioner – bank from exercising its powers under the SARFAESI Act, 2002. It is not as if the claimant (the Respondent herein) is left remediless if such action is taken. In such a situation, the same arguments that were canvassed before me, can certainly be canvassed before the Debt

Recovery Tribunal (in short "DRT"), if and when the Respondent challenges the action taken by the Petitioner – Bank, under Section 17 of the SARFAESI Act, 2002.

6 This being the case, I find that the orders passed by the Arbitral Tribunal dated 3rd August, 2018 and 23rd October, 2018 cannot be sustained and I hereby set aside the same

7 Considering that the present litigation has been bona-fide prosecuted by the Respondent herein, the Petitioner- bank is restrained from taking any further action against the Respondent under the provisions of the SARFAESI Act, 2002 for a period of three weeks from today so as to enable the Respondent to approach the DRT under Section 17 to challenge the action taken by the Petitioner – bank under the provisions of the SARFAESI Act. This will be subject to further orders that may be passed by the DRT after hearing both the parties. It is made clear that I have not opined on the merits of the arguments canvassed on behalf of the Respondent or the Petitioner and the application to be filed by the Petitioner before the DRT shall be decided by it on its own merit and uninfluenced by any observations made either by the Arbitral Tribunal or in this order.

8 The Arbitration Petition is disposed of in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)