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

Date of Decision: 15th March, 2019

\+ **O.M.P. (COMM) 467/2016**

SURINDER MOHAN TALWAR & ORS. ..... Petitioners

Through: Mr. Pinku Singh, Advocate with Petitioner No.1 in person. (M:9625949957 & 9818349856)

versus

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD. ..... Respondent

Through: Mr. Avinash Kumar, Advocate. (M:9811182985) with Mr. Gaurav Dahiya, AR in person.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'Act'*) has been filed challenging award dated 21st November, 2011.

2. The background of the disputes is that the Petitioners (*hereinafter* '*Borrowers*') had availed of a business loan from the Respondent - Cholamandalam Investment & Finance Co. Ltd. (*hereinafter,* '*Respondent*') vide loan agreement no.X0HEDHE00000383124 dated 28th November, 2008. The home equity loan, as per the loan agreement, was sanctioned for a sum of Rs.75,25,000/-, which was due and payable in 156 equal monthly instalments of Rs.1,22,546/-. EMIs were to commence from 5th January, 2009 and were to end on 5th December, 2021. The case of the Borrowers is that 36 EMIs were paid till 31st December, 2011, however, thereafter due to

various business losses, the payments could not be made. The Respondent invoked arbitration proceedings and filed its claims for a sum of Rs.77,56,171/- together with simple interest @ 48% per annum. Notice was issued and the Borrowers were served by the Ld. Arbitrator repeatedly, however, they did not appear. The notices of hearing were also sent on several occasions. Since the Borrowers did not appear after repeated opportunities, the Ld. Arbitrator caused publication in Veer Arjun, Delhi and thereafter, the proceedings were continued with the Borrowers being proceeded *ex-parte*. The findings of the Ld. Arbitrator are:

1) That proper loan documents were executed.
2) That the Borrowers had availed of a business loan.
3) That the loan agreement was duly signed.
4) That the Borrowers were irregular in making payments.

3. In view of the defaults by the Borrowers, the Ld. Arbitrator, after dealing with the exhibits on record, held that the Borrowers are in breach of the loan agreement. Accordingly, the award was passed in the following terms:

> "*In the result the Award is passed in favor of the claimant herein as follows:*
> *The Respondents are hereby directed to jointly and severally pay to claimant the following amounts:*
> *i] The Claim sum of Rs. 77,56,171/- (Seventy Seven lakhs fifty six thousand one hundred and seventy one) as on 11.08.2011*
> *ii] further interest of 18% per annum for Rs.77,56,171.00 from the date of claim petition until the date of actual payment*"

4. The main objection raised in section 34 petition is that the Borrowers

were not served in the matter and since the proceedings were *ex-parte*, they should be given an opportunity to defend the case. It is, further submitted that a letter dated 1st October, 2013 was issued by Respondent finance company in which as on 1st October, 2013, a sum of Rs.34,13,961/- was the outstanding amount. Ld. counsel for the Borrowers submits that in view of this letter, the award, which has awarded a much higher amount in favour of the Respondent, deserves to be set aside.

5. On the other hand, Mr. Avinash Kumar, Ld. counsel for Respondent submits that the Borrowers repeatedly failed to appear before the Ld. Arbitrator. The facts having being admitted in respect of taking of loan, payment of instalments, default in payment of EMIs, the award deserves to be upheld. He further submits that the Borrowers repeatedly avoided appearing before the Ld. Arbitrator, despite service, and hence no leniency ought to be showed. He further submits that the scope of section 34 of the Act is very limited and hence this is not a case calling for interference.

6. This Court has seen the arbitral record. There are various envelopes with the speed post receipts in original. Even the AD cards are on record. Endorsement on these envelopes show that the Ld.Arbitrator has made repeated efforts to serve the Borrowers. Petitioner No.1 – Mr. Surinder Mohan Talwar is present in Court and confirms that his address is B-77, Rishi Nagar, Rani Bagh, New Delhi. The original newspaper of Veer Arjun dated 1st November, 2011 is also on record. Thus, the question of service being disputed does not arise. Ld. Arbitrator has taken sufficient steps to serve the Borrowers. Speed post receipts are in original, envelopes are in original and the newspaper has also been placed on record in original. The address of the Borrowers being the same address where Registered post

envelopes were sent, the service is deemed to have been effected in terms of the provisions of section 27 of the General Clauses Act, 1897.

7. Insofar as the letter dated 1st October, 2013, placed as annexure P-5 with the petition is concerned, the same reads as under:

"01-Oct-2013

To,
Mr. SURINDER MOHAN TALWAR
B-77,NEAR CAPTAIN MARG,
RISHI NAGAR RANI BAGH
NEW DELHI – 110034
011-27016781

Dear Sir/Madam,

Sub: Over Due Amount intimation
Ref: Agreement No. ***X0HEDHE00000383124***

This is with reference to your Home Equity Loan availed by you from our Company vide Loan Account No. ***X0HEDHE00000383124.*** *<u>We have observed an amount of Rs.3413961/- is still outstanding in your above mentioned loan account towards Instalment/Cheque bounced/Additional finance charges</u>. Please be advised these charges were debited on account of bounced Cheques/ ECS towards your monthly instalments and delay in making payment of the same.*

Request you to kindly update the same immediately in order to avoid further accumulation of these charges.

Please be advised you need to submit a valid proof in case if the bounce is due to technical reasons.

Further kindly ignore this communication if you have already cleared the entire dues as mentioned above.

Thanking you,
For Cholamandalam Investment and Finance Co. Ltd
(Formerly known as Cholamandalam DBS Finance Ltd)"

From the above letter it is clear that as of 1st October, 2013, a sum of Rs.34,13,961/- was shown to be the outstanding sum. There is no doubt that the award has been passed for a much higher amount of Rs.77,56,171/- along with simple interest @ 18% per annum. The above letter is annexed as Annexure P-5 with the objection petition. No reply has been filed to the objection petition till date. Section 34 was preferred on 28th July, 2014 and it has almost five years since this document has been in possession of the Respondent. The Respondent was given sufficient time to verify this document. Further, a perusal of the document also shows that the same is not a fabricated document. Similar letters are on the arbitral record, which are computer generated without any signatures. Even the agreement number, the letter head used, etc. all are authentic. Thus, as on 1st October, 2013, admittedly, the outstanding amount was, in terms of the letter, Rs.34,13,961/-. Since this document was issued by the Respondent finance company, which has not challenged the veracity or the genuinity of the letter, the Court is inclined to modify the award in terms of this letter.

8. Ld. counsel for Respondent submits that this may possibly be a settlement offer made by the finance company to the Borrowers. Even if this is the position, considering that Petitioner No.1 is not in good financial condition, the impugned award is modified to the effect that the claims of Respondent finance company are allowed for a sum of Rs.34,13,961/- to be paid along with simple interest @ 8% per annum from 1st October, 2013 till date. The impugned award is modified, accordingly.

9. Petitioner No.1 confirms that the mortgaged property stands in the name of his wife. The Borrowers are restrained from disposing of the mortgaged property or creating any third party interest till the disposal of the

execution proceedings or the SARFAESI proceedings which may be instituted by the Respondent.

10. OMP is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MARCH 15, 2019/*dk*
(Corrected and released on 28th March, 2019)