

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.Nos.242 and 266 of 2015

O.P.No.242 of 2015

Mr.C.P.Venkatesan
No.20, Nanjappa Nagar
2nd Street West
Singanallur, Coimbatore
Pin: 641 005

... Petitioner

Vs.

1. M/s.Kotak Mahindra Bank Ltd.,
Rep. By its Authorised Signatory
2nd Floor, 3 Doss India Tower
2nd Line Beach, Parrys
Chennai – 600 001

2.D.Saravanan
Sole Arbitrator
Orient Chambers
4th Floor, No.90/73, Armenian Street
Chennai – 600 001

3. Mr.N.Sathish Kumar .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the ex parte award of the sole Arbitrator / 2nd Respondent passed in A.C.P (Kotak) No.301 of 2010 dated 15.12.2014 as against the Petitioner with cost and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.P.Navaneetha Krishnan

For Respondents : Mr.Kiran Krishnan
for Mr.K.Moorthy for R1
No appearance for R3

O.P.No.266 of 2015

Ms.N.Sathish Kumar
Sri Murugan Motors and Earth Movers
No.593-1, NH 47, Gold Coins Avinashi Road
Civil Airodrome Post, Coimbatore
Pin: 641 014

... Petitioner

Vs.

1. M/s.Kotak Mahindra Bank Ltd.,
Rep. By its Authorised Signatory
2nd Floor, 3 Dass India Tower
2nd Line Beach, Parrys
Chennai – 600 001
- 2.D.Saravanan
Sole Arbitrator
Orient Chambers
4th Floor, No.90/73, Armenian Street
Chennai – 600 001

3. Mr.C.P.Venketasalam

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the ex parte award of the sole Arbitrator / 2nd Respondent passed in A.C.P (Kotak) No.301 of 2010 dated 15.12.2014 as against the Petitioner herein with cost and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.Kiran Krishnan

for Mr.K.Moorthy for R1
No appearance for R3

COMMON ORDER

Mr.Navaneethakrishnan, learned counsel on record for petitioner in O.P.No.242 of 2015, Mr.S.Saravanan, learned counsel on record for petitioner in O.P.No.256 of 2015 and Mr.Kiran, learned counsel representing Mr.K.Moorthy, counsel on record for contesting first respondent Kotak Mahindra Bank Ltd., in both the captioned 'Original Petitions' ('OPs' in plural and 'OP' in singular for the sake of brevity) are before me in this web-hearing on a video-conferencing platform. To be noted, captioned OPs are listed under the cause list caption 'FOR REPORTING SETTLEMENT'.

2. The aforementioned three counsel make a common submission in unison that both captioned OPs have been filed challenging the same arbitral award, namely 'award dated 15.12.2014 bearing reference A.C.P (Kotak) No.301 of 2010', (hereinafter 'impugned award' for the sake of brevity and convenience). All the learned counsel submit that while O.P.No.242 of 2015 is at the instance of borrower, O.P.No.266 of 2015 is at the instance of guarantor. Two separate memos (one in each OP), but with the same terms and annexures have been filed. The scanned copy of

the memo and annexures is as follows:

O.P.No.242 of 2015

In the matter of Arbitration of
Conciliation Act, 1996

In the matter of dispute
Between
M/s. Kotak Mahindra Bank Ltd.,
Mr. C.P. Venkatasalam and
others in respect of Loan
Agreement No. S.A. 225991,
Dated 22.07.2008.

Mr. C.P. Venkatasalam,
No.20, Sanjappa Nagar,
2nd Street West,
Sampalalur, Coimbatore,
Pin - 641 005. ... Petitioner/Petitioner/Borrower

Vs.

1. M/s. Kotak Mahindra Bank Ltd.,
by its Authorised Signatory,
2nd Floor, 3 Doss India Tower,
Lafayette Beach, Parrys,
Chennai - 600 001.

2. D. Saravanan,
Sole Arbitrator,
Orient Chambers,
4th Floor, No.90/73, Armenian Street,
Chennai - 600 001.

3. Ms. N. Sathish Kumar,
Sri Marigan Motors and Earth Movers,
No.593-1, NH 47, Gold Coins Avmash Road,
Civil Airdrome Post, Coimbatore,
Pin - 641 014. ... Respondents/Respondents

MEMO FILED BY THE PETITIONER

1. The petitioner states that the 1st respondent herein raised a dispute with regard to repayment of vehicle loan in respect of the loan agreement no S.A.225991, dated 22.07.2008, which was referred to the sole arbitrator. The sole arbitrator entered the reference in ACP (Kotak) No.301 of 2010, wherein the petitioner herein was arrayed as the 1st respondent and the guarantor Mr. N.Satish Kumar

was arrayed as the 2nd respondent. The Sole Arbitrator allowed the claim of the 1st respondent herein by an award, dated 15.12.2014. Challenging the same, the petitioner herein has filed the above O.P. in so far as the award passed as against the petitioner herein is concerned.

2. The petitioner further submits that during the pendency of the above O.P., the petitioner herein had approached the 1st respondent for settling the dispute and offered to pay a sum of Rs. 2,20,000/- as one time settlement for settling the entire claim. The 1st respondent herein by their offer letter, dated 18.11.2020, had agreed to receive the same under One Time Settlement towards the full and final settlement of the claim of the 1st respondent herein in respect of loan agreement no.S.A.225991, dated 22.07.2008. The petitioner herein has paid the agreed amount of Rs.2,20,000/- to the 1st respondent herein on 19.11.2020 through R.T.G.S. vide ref no. ICICR12020111900481436 towards the full and final settlement of the loan amount in respect of the loan agreement no.S.A.225991, dated 22.07.2008. As the entire claim of the 1st respondent herein in respect of loan agreement no.S.A.225991, dated 22.07.2008, has been settled, nothing survives for further adjudication in the above O.P. The petitioner herein is enclosing the copy of the offer letter, screenshot of the RTGS transaction and the copy of the letter 19.11.2020.

Therefore, it is humbly prayed that this Hon'ble Court may record the settlement of the entire claim of the 1st respondent in respect of the loan agreement no.S.A.225991, dated 22.07.2008 and close the above O.P. and pass such or further order as this Hon'ble Court may deem it just and necessary and thus render justice.

Dated at Chennai on this the 19th day of November, 2020.

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P. Nam
COUNSEL FOR THE PETITIONER

kotak		Kotak Mahindra Bank			
Venkatasalam .C.P COIMBATORE		SETTLEMENT LETTER			
Date	Assgmt Agmt Dt.	Contract No.	APPL-APAC	Reference No.	Account/Card No.
18-Nov-20	01-Jan-17	5A225991	5A225991	KMBL : 2020-21-388210	
Loan/Credit Facility availed from:		Commercial Banking Group - Kotak Mahindra Bank			
Subj: Your request for negotiated settlement of dues payable for above referred account					
We refer to the discussions with respect to your offer for settlement of the outstanding loan/card dues payable by you in respect of the captioned account.					
As you are aware, vide an Assignment Agreement executed as on date mentioned above the captioned facility has been, transferred and assigned in favour of the Bank, along with the underlying security/security interest created (if any) for repayment thereof.					
Please be informed that while you have expressed your inability to pay total debt due and payable by you, and requested us to accept the settlement amount towards full and final settlement of the total debt, we hereunder agree to your request on the terms and conditions set out herein below and overleaf:					
Sr No	Date	Mode	Debt	Inst No	Amount
1	18-Nov-20	Any			220000.00
Total:					220000.00
Two Lakh Twenty Thousands Rupees only.					
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This is a computer-generated document. No signature is required.					
					
Kotak Mahindra Bank Limited Registered Office: 21 BKC, C-11, BKC, Mumbai - 400 050, India Toll Free Customer Service: 1800 122 5000 Mumbai: 400 027 2200, Toll Free: 1800 122 5000 Website: www.kotak.com					

Terms And Conditions:

1. The parties agree that the terms of this letter are in addition to the contractual terms and conditions stipulated in the various loan and security documents and the contents herein should be read as part and parcel of the said documents executed prior to this letter.

2. This letter is issued without prejudice to our rights, remedies and options available to us in any action initiated under any law for the time being in place. Further, this letter shall be subject to mutually agreed terms and/or such other terms as may be agreed upon subsequent to the issuance of this letter.

3. In case of any dispute in calculation of total debt due and payable by either party, amount specified herein shall be recomputed based on contractual terms of the original credit facility or if any amount is decreed / crystallized under any law the same shall be treated as total debt due and payable after adjusting for any payment made.

3. That in case there is any default in making payment of mentioned in the schedule herein within the timeline as mentioned herein, the schedule shall stand terminated and deemed invalid and we shall be entitled to proceed to recover the total debt after giving credit of whatever amount received as per the contractual terms of the original credit facility. However if any amount is decreed / crystallized under any law or award passed the same shall be treated as total debt.

4. Any dispute, difference of opinion and / or claims arising out of this document shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time), by a sole arbitrator to be appointed by us. Any arbitration award/direction passed shall be final and binding on the parties. The venue of such arbitration shall be at Mumbai or Delhi or Chennai or Kolkata to be decided at our discretion.

However this clause is subject to any civil proceedings, original applications or arbitration proceedings pending before any court of law, Debt Recovery Tribunal or Arbitrator and the same will have an overriding effect on this clause.

5. Upon payment of the settlement amount in the manner as mentioned herein,

a. Neither party shall have any claim of whatsoever nature against the other in respect of this account and in case any one of the parties have initiated any action, legal or otherwise, shall co-operate to put an end to the same and take steps accordingly.

b. We shall initiate necessary steps to update the records with Credit Information Bureaus within 60 days. Update shall be as per terms of settlement letter.

c. In case you require 'No Due Certificate', please contact our toll free number mentioned overleaf.

19/11/2020

From
C.P. Venkatasalam,
20, 2nd Street (West),
Singanallur,
Coimbatore 641005.

To
Kotak Mahindra Bank Ltd,
Chennai Branch,
Chennai.

Sir

Sub: OP No. 242 of 2015 (Honble High Court Madras). In Loan Agreement No. SA 225991 dt 22.07.2008 – Reg
Ref: your OTS Letter dt 18.11.2020.

As per your OTS Letter dtd 18.11.2020, I am herewith enclosing a sum of Rs. 2,20,000/- (Two Lakhs Twenty Thousand Only) by way of RTGS Reference No ICICR12020111900481436 Dt 19/11/2020 ICICI Bank, Trichy Road, Coimbatore Branch towards full and final settlement of Loan in Agreement No SA 225991 dt 22.07.2008. (OP No. 242 of 2015 filed by C.P. Venkataschalam Vs Kotak Mahindra Bank Ltd and others, before the Honble High Court Madras).

Kindly accept the RTGS payment and issue a Loan Account Closer Certificate in this regards.

Thanking You


C.P. Venkatasalam

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Enclosures:

1. Yours OTS Letter dtd 18.11.2020
2. RTGS Reference No ICICR12020111900481436
Transaction No : 2125140182

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Payment Collection

Date : 19-11-2020

Time: 17:38:41

Collector Name: kmb170866-deepak d b db

***** **Customer Copy** *****

Customer Name: Venkatasalam .C.P

Party ID: 20739227

Product: SA

APAC No: 225991

Amount (Rs.): 220000.00

Sr No	TXN Type	Amount (Rs.)
1	TR	220000

Total Amount (Rs.): 220000.00

Receipt Number: DB160717405787691217

Payment Mode: Cash

Customer Mobile Number: 9842211223



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3. All the aforementioned three counsel submit in unison that captioned OPs can be closed by recording the aforementioned memos together with annexures evidencing settlement (scanned and reproduced above). Though obvious it is made clear that aforementioned memo and annex ures will stand substituted in place of the impugned award and govern the parties from hereon.

4. The memos, both dated 19.11.2020 filed in the captioend OPs and the annexurs evidencing settlement shall form part of this common order.

Both captioned OPs disposed of on above terms. There shall be no order as to costs.

03.12.2020

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O.P.Nos.266 and 242 of 2015

M.SUNDAR.J.,

gpa



O.P.Nos.242 and 266 of 2015

03.12.2020

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