

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 505 of 2018**

Amreek Singh Bambra

....Petitioner

V/s.

Tata Capital Financial Services Ltd.

....Respondent

None for the petitioner.

Mr. Ranjeev Carvalho a/w Ms. Dimple Merchant, Mr. Akshay Sawant i/b I.
V. Merchant and Co. for respondent no. 1.

CORAM : K.R.SHRIRAM, J.

DATED : 5th APRIL 2021

P.C. :

1 None for petitioner. I have perused the order and also the petition.

2 From the award impugned, it appears that petitioner had entered into a Channel Finance Facility Agreement dated 29th January 2014, (“the said agreement”) under which respondent had sanctioned channel finance facility of Rs.50 lacs to petitioner. Petitioner had utilised the facility. Petitioner who has executed the said agreement and petitioner and one Rajendra Shelar had also executed a personal guarantee dated 29th January 2014 in their personal and individual capacity to repay on demand upon default or delay by petitioner of amounts due and payable by petitioner to respondent. Petitioner had also executed a demand promissory note dated 29th January 2014 in favour of respondent promising to pay them on demand Rs.50 lacs with interest as applicable. Certain further documents

were executed by petitioner. As petitioner was irregular in repayment of amounts due and payable, respondent after giving notice, referred the dispute to arbitration as per arbitration agreement and letter of guarantee.

3 Petitioner belatedly appeared with his advocate and also filed affidavit in reply. The grounds taken in the affidavit in reply before the Arbitrator is basically the grounds taken in this petition as well.

4 According to petitioner:- a) petitioner was illiterate and his signatures were obtained without his consent and without his knowledge; b) respondent had commenced proceedings under Section 138 of the Negotiable Instruments Act against petitioner for dishonour of cheque and, therefore, simultaneously two proceedings cannot be pursued; c) petitioner has never given consent to the Arbitrator to conduct arbitration proceedings; d) that the person who signed the statement of claim did not have a valid power of attorney etc.; e) no loan calculation was given and that he has not availed or utilised the facility disbursed by respondent and hence there is no default; and f) no tractors were delivered to him, therefore, question of he utilising any facility disbursed by respondent would not arise and, therefore, no amount is payable. Under the arrangement between the parties, respondent was to disburse such amounts as provided under clause (3) of the agreement. Clause (3) reads as under :-

“Clause 3 DISBURSEMENT

Upon receipt of a drawdown request from the Borrower (“Drawdown Request”). TCFSL may disburse such amount mentioned therein based on the available Credit Limit, by any payment ,mechanism, including transfer through RTGS, electronic fund transfer, remittance through

internal transfer between the bankers or in such other manner as TCFSL may deem fit by adoption of any of the following procedures:

Process A

(a) Upon sanctioning of the Credit Limit in favour of the Dealer and upon, the Dealer making any request for purchase of Goods, the Dealer shall forward the Drawdown Request to TCFSL pursuant to which. TCFSL shall allow disbursement to the Seller/s either in part or in full to the Seller/s based on which, the Seller/s shall raise invoices on the Dealer and dispense the Goods so requested.

(b) The dealer shall give a separate Drawdown Request for each disbursement

OR

Process B

(a) The Dealer shall issue separate Drawdown Requests letters of indent for the purpose of purchasing Goods from the Seller/s with a copy to TCFSL in the format and manner as may be prescribed by TCFSL.

(b) TCFSL shall intimate the Seller/s about the available Credit Limit of the Dealer separately on a daily basis by online communication in respect thereof or in such other manner as may be agreed between TCFSL and the seller/s. The authorised designated officer of the Seller/s shall process such request contained in the Drawdown request/ indent Letter to the extent of available Credit Limit for the Dealer under the said Facility and the same shall be communicated by the Seller/s to TCFSL.

(c) Upon receipt of the details of invoices from the Seller/s, TCFSL will pay to the Seller/s the amount as mention therein. Every such payment request of the Seller/s would have to be honoured by TCFSL. Upon TCFSL making such payment to the Seller/s, the Dealer shall be deemed to have represented, warranted, undertaking and confirmed to TCFSL IN WRITING TO THE Dealer has unconditionally accepted the invoice raised by the Seller/s and TCFSL shall not be requested or required to confirm or verify in any manner the mount, validity, authenticity or acceptance of the said invoices. It shall be the responsibility of the Dealer to ensure that the Seller/s does not issue invoices for the amounts more than the Credit Limit at any time during the subsistence of this Agreement.

(d) Upon TCFSL informing the Seller/s that the Dealer has exhausted its Credit Limit, then the Seller/s may not sell any further Goods to the Dealer. If the Seller/s do so knowing that the Dealer has exhausted its Credit Limit, then TCFSL shall not make any payment to the Seller/s for any such invoices raised by them on the Dealer.

(e) The Dealer shall grant to TCFSL an irrevocable Power of Attorney in a form acceptable to TCFSL, for the said purposes.

OR

Process C

*The Dealer places Drawdown Requests online (“**online Disbursement Request/ODRs**”). The procedure, terms and conditions governing the ODRs shall be as set out in Schedule 2 hereto.*

OR

Such other process as may be determined by TCFSL and as may be agreed between the Parties.”

5 It is petitioner’s case that no tractors were delivered to petitioner for which respondent had made payment to the tractor manufacturers under the said Agreement. The Arbitrator in his award has not dealt with this stand of petitioner and respondent also does not seem to have even produced any document to prove that they made the disbursement at the request of petitioner. The award is totally silent and Mr. Carvalho in fairness agreed that the Arbitrator has not dealt with this aspect at all.

6 In the circumstances, since the pleadings have also been completed, in my view, I can dispose of the petition at this stage itself.

7 The award impugned in the petition is set aside with no order as to cost.

I must, however, hasten to observe that the other grounds (a) to (e) in paragraph 4 above raised by petitioner are devoid of merits.

8 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)