

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.390 OF 2021**

Aditya Birla Finance Ltd

....Petitioner

V/s.

Jumbo Finvest (India) Ltd. & Ors

...Respondents

Mr. Sharan Jagtiani, Senior Advocate a/w. Ms. Shradha Achliya, Mr. Amit Vyas, Ms. Sneha Nanandkar, Mr. Sagar Vichare and Mr. Devdatta Uchil i/b. Vertices Partners for petitioner.

Mr. Surel Shah a/w. Mr. Sachin K. Hande and Mr. Sayyed Parvez i/b. Sachin Hande for respondents.

**CORAM : K.R. SHRIRAM, J.
DATED : 29th JULY 2021**

P.C. :

1 Mr. Shah appearing for respondents states that Mr. Hande will be entering vakalatnama for respondents within two weeks from today.

2 Mr. Shah states that court may appoint a sole arbitrator and this petition can be heard as an application under section 17 by the arbitrator. Respondent will file a reply before the arbitrator. Mr. Shah further states that until section 17 application heard and disposed, order in terms of prayer clauses (b) and (c) of this petition be granted with the following clarifications.

3 As regards prayer clause (b), the injunction will be up to Rs.17 crores and it will be unencumbered. As regards prayer clause (c) respondent nos. 2 and 4 have already created third party rights but will not create any further third party rights.

Mr. Jagtiani is agreeable to this suggestion.

For ease of reference prayer clauses (b) and (c) read as under:-

“(b) pending the hearing and final disposal of the arbitration proceedings, respondent no.1, its directors, agents, officer, any persons claiming under them be restrained by a temporary order and injunction of this Hon’ble Court from in any manner, directly or indirectly, dealing, selling, offering for sale, causing it to be offered for sale, transferring, causing to be transferred , parting with possession of, delivering, creating or causing to be created any third party rights of whatsoever nature, or any right, title and interest in the assets, properties which have been hypothecated vide Deed of Hypothecation dated September 27, 2018 in favour of the petitioner by the respondents.

(c) pending the hearing and final disposal of the arbitration proceedings, respondent no.2 and respondent no.4 and their agents or any person claiming under them be restrained by a temporary order and injunction of this Hon’ble Court from in any manner, directly or indirectly, dealing, selling, offering for sale, causing it to be offered for sale, transferring, causing to be transferred , parting with possession of, delivering, creating or causing to be created any third party rights in respect of their personal assets or properties in any manner whatsoever or the amounts secured by the Deed of Guarantee.”

4 Notwithstanding notice invoking arbitration has been issued, at the joint request of Mr. Jagtiani and Mr. Shah, Mr. Sarosh Bharucha, advocate practicing in this court (Address:- 201, Savla Chambers, 40 Cawasji Patel Street, Mumbai 400 001, Mobile:-9821034806, Email:- sbharucha@gmail.com) is appointed as sole arbitrator to arbitrate on all disputes arising out of and/or in connection with and/or relating to Loan Agreements dated 20th August 2018 and 21st August 2018 and counter claim, if any.

5 The fees and expenses of the Arbitrator to be shared equally between the parties and the same will be costs in the arbitral proceedings. Arbitrator

to decide the procedure in consultation with the parties.

6 For the sake of expediency, Learned Arbitrator shall make disclosure in writing under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 directly to the parties. Petitioner shall file a copy thereof in the Registry within two weeks of receiving the same.

7 Liberty to apply if the arbitrator expresses inability to accept the reference.

8 All rights and contentions of the parties are kept open.

9 Petitioner to file a copy of Section 9 petition and the reply and rejoinder before the Learned Arbitrator, who shall consider the same as an application under Section 17. Learned Arbitrator may permit further pleadings in the Section 17 application.

It will be open to petitioner to pray for the balance reliefs as prayed for in this petition before the Learned Arbitrator and for respondents to apply for vacating the reliefs already granted.

10 Petition accordingly stands disposed.

11 Mr Shah states that his consent and statement recorded above has been based on instructions received from respondent no.4 who is the Managing Director of respondent no.1 and who says he has authority from the other respondents as well to make that statement and to give such instructions to Mr. Shah.

(K.R. SHRIRAM, J.)