

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 697 OF 2018
WITH
NOTICE OF MOTION NO.1220 OF 2018**

Ambarwadikar & Co.

....Petitioner

V/s.

Indusind Bank Ltd. (previously known
as Ashok Leyland Finance Ltd.)

....Respondent

**WITH
ARBITRATION PETITION NO. 698 OF 2018
WITH
NOTICE OF MOTION NO.1219 OF 2018**

Mr. Vivek Rane i/b Ashwin Kapadnis for Petitioner;
Mr. Anoop U. Patil for Respondent No. 1.

**CORAM : K.R.SHRIRAM, J.
DATED : 22nd FEBRUARY 2021**

P.C. :

1 These are the petitions under Section 34 of the Arbitration and Conciliation Act 1996.

2 Petitioner herein had, after they received a notice from the Arbitrator having entered reference, raised an objection to the Arbitral proceedings under Sections 12, 13 and 20 of the Arbitration and Conciliation Act 1996. According to petitioner, the Arbitrator has been the Arbitrator in many matters for respondent and, therefore, expressed apprehension on the neutrality of the Arbitrator.

Under Section 13, petitioner challenged the directions of the Arbitrator directing petitioner to straightaway file the written statement

without fixing a preliminary meeting. Petitioner's challenge under Section 20 was respondent being Indusind Bank having its registered office at Pune and Corporate office at Mumbai, should hold the arbitration hearing in Mumbai or Pune and in Marathi language.

3 In my view, the objections under Sections 13 and 20 are baseless because petitioner had an earlier round before this court and this court by an order dated 27th February 2015 passed a consent order whereby, it was agreed that respondent no.1 would be entitled to invoke the arbitration agreement and appoint arbitrator in accordance with arbitration agreement and the venue of the arbitration proceedings shall be in accordance with the arbitration agreement. Petitioner also agreed to file written statement within four weeks from the date of communication of the name of the arbitrator by respondent no.1 and the arbitrator was given four months to dispose of the proceedings. Admittedly, the arbitration agreement specifies that the language shall be in English and venue shall be at Madras. Therefore, the objection under Sections 13 or 20 has been rightly rejected.

4 But there is substance, in my prima facie view, for challenge under Section 12. This is because respondent has admitted in the counter in paragraph 3, as recorded in paragraph 8 of the impugned Award that, they are regularly appointing the same arbitrator. Arbitrator also admits that he has been regularly appointed as arbitrator but interestingly, according to arbitrator it is a custom and practice for the Banks and Financial sectors in frequently appointing the same arbitrator in different cases, from their small

and specialized pool or panel of arbitrators. According to arbitrator, there is no prohibition in law for a company to have a panel of persons for appointing arbitrators to the disputes between the company with individuals. Arbitrator has also stated that time to challenge his appointment was 15 days and the application came to be filed on 18th April 2015 when the arbitrator has intimated to petitioner by a letter of appointment dated 14th March 2015. Conveniently, arbitrator has not mentioned when that letter was delivered to petitioner, and arbitrator has not disclosed in his communication with petitioner that he is in respondent's panel of arbitrators and he has been appointed as arbitrator in many matters. That disclosure is what is contemplated under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act 1996.

5 In the circumstances, in my view, this matter requires consideration. Petitions are admitted. Mr. Patil waives service.

6 Mr. Patil states that a reply has already been filed. Mr. Patil seeks leave to file additional affidavit in reply. Leave granted. Additional affidavit in reply to be filed and copy served within 4 weeks from today. Rejoinder, if any, to both the affidavits to be filed and copy served within two weeks thereafter.

7 Petitions be listed for final hearing on 19th April 2021.

8 In the meanwhile, order granted in terms of prayer clause (a) of the notice of motions, which reads as under:

“(a) Pending hearing and final disposal of the present petition, to stay the effect, execution, operation and implementation of the impugned

Award dated 4/8/2017, passed by the Sole Arbitrator D. Saravan in (CV) ACP No.710/2015 (Exhibit-A)."

9 Notice of motion no.1219 of 2018 and Notice of motion no.1220 of 2018 accordingly stand disposed.

(K.R. SHRIRAM, J.)