

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

**OP.No.364 of 2020 & OA.No.287 of 2020
& A.No.1599 of 2020 & A.No.1600 of 2020**

NORTHERN ARC CAPITAL LIMITED
(Formerly known as IFMR Capital Finance Ltd.,)
Represented by Mr.K.C.Shiva
Having Office at 10th Floor, Phase I,
IIT Madras Research Park,
Kanagam Village, Taramani,
Chennai 600 113.

... Petitioner

Vs.

1.BHORUKA CLASSIC FINANCE PVT. LTD.,
1207, Regent Chambers,
Nariman Point,
Mumbai – 400 021.

2. Vikas Agarwal
3 V.Inbavijayan

... Respondents

Prayer: This Original Petition is filed under Section 14 of the Arbitration and Conciliation Act, 1996 r/w Section 11(6) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the arbitrator in ACP(NAC)No.1 of 2020 between the petitioner and the respondents and

appoint an independent sole arbitrator to adjudicate upon the disputes between the petitioner and the respondents.

For Petitioner : Mr.Anirudh Krishnaa

For Respondents : M/s.R.Vinodhini

ORDER

This Petition has been filed under Section 14 r/w Section 11 (6) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the Arbitrator in ACP(NAC)No.1 of 2020 between the petitioner and the respondents and appoint an independent sole Arbitrator to adjudicate the disputes between the petitioner and the respondents.

2. The learned counsel for the petitioner has submitted that the petitioner is a leading Non-Banking Financial Company (NBFC) and the first respondent is also a Non-Banking Financial Company (NBFC) and the second respondent is a guarantor to the facilities extended by the petitioner to the first respondent. He further submitted that as per the Facility Agreements entered between the petitioner and the first respondent dated 05.10.2016, 17.11.2016, 29.12.2016 and 13.02.2017, the petitioner has

extended financial facility to the first respondent to the tune of Rs.6,90,00,000/-. He further submitted that the first respondent agreed to repay the said amount with interest at the rate of 14.95% per annum in 36 monthly instalments and executed the following documents.

- a) Deed of Hypothecation
- b) Demand Promissory Note
- c) DPN Delivery cum Waiver Letter
- d) Special Power of Attorney (Facility Agreement)
- e) Special Power of Attorney (Deed of Hypothecation)
- f) Deed of Guarantee.

3. The learned counsel for the petitioner has further submitted that the second respondent stood as guarantor and executed the four deeds of personal guarantee on 05.10.2016, 17.11.2016, 29.12.2016 and 13.02.2017 in favour of the petitioner, guaranteeing the amounts payable under the aforesaid Facility Agreements entered into between the petitioner and the first respondent. He further submitted that the first respondent failed to make payments to the petitioner in accordance with the terms of the Facility Agreements. He further submitted that lastly the payment was made on

19.10.2019 and thereafter the first respondent did not make any payment and hence the petitioner has sent notices calling upon the first respondent to repay the said amount. Even thereafter the first respondent repay the amount. Hence, the petitioner, left with no other alternative, issued a notice of arbitration to the respondents 1 and 2 dated 14.02.2020 in accordance with Clause -15 of the Facility Agreements. He further submitted that though the respondents 1 and 2 received the said notice, they did not come forward to pay the amount and hence, the petitioner has nominated the third respondent as a sole arbitrator. He further submitted that the third respondent by the letter dated 18.02.2020 has accepted his appointment. On 19.02.2020, the sole arbitrator/3rd respondent has sent a communication to the parties stating that the first hearing to be held on 04.03.2020. On 04.03.2020, there was no representation from the respondents 1 and 2. As on 04.03.2020, the outstanding principal amount was Rs.1,50,53,532/-. He further submitted that the petitioner has submitted an application under Section 17 of the Arbitration and Conciliation Act,1996, seeking interim relief and the sole Arbitrator, taking note of the prima facie case and balance of convenience, has granted interim order dated 04.03.2020 restraining the first respondent from alienating or creating any encumbrance

over the property owned by the first respondent. He further submitted that on 09.05.2020, the petitioner received an e-mail from the counsel for the respondents 1 and 2 acknowledging the receipt of the interim orders and along with the petitioner's pleadings. He further submitted that the respondents 1 and 2 have submitted a soft copy of an application under Section 13 of the Act stating that they are objecting to the unilateral appointment of the Arbitrator under Section 12(5) r/w VII Schedule of the Act. He further submitted that since the said application indicates a presumption of bias with the sole Arbitrator, the petitioner has filed the present petition to terminate the mandate of the Arbitrator in ACP(NAC) No.1 of 2020 and appoint an independent sole Arbitrator to adjudicate the disputes between the petitioner and the respondents 1 and 2.

4. When this matter came up for hearing on 19.02.2021, the learned counsel for the respondents 1 and 2 has submitted that the respondents 1 and 2 have already filed a memo before this court on 04.01.2021 stating that they have no objection for appointment of an independent sole arbitrator and hence, she requests to pass an appropriate order.

5. A perusal of the memo filed by the respondents 1 and 2 shows that the respondents 1 and 2 have stated that they have no objection for appointment of an independent sole arbitrator by this court for adjudication of the disputes raised by the petitioner and that the other interim applications may be relegated to the said independent sole arbitrator for adjudication under Section 17 of the said Act.

6. In view of the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and also the memo filed by the respondents 1 and 2, this court is inclined to allow this petition.

7. In the result, this petition is allowed. The mandate of the sole arbitrator/third respondent in ACP(NAC)No.1 of 2020 is hereby terminated.
The Hon'ble Mr.Justice G.M.Akbar Ali, Judge, (Retd) residing at No.6, 9th Cross Street, Senthil Nagar, Kolathur, Chennai – 600 099, Mobile :9445025151, is appointed as Sole Arbitrator to adjudicate the disputes raised by the petitioner in this petition and after issuing notice to both the

parties, and upon hearing them, pass an award as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. The learned Arbitrator is at liberty to fix his remuneration as well as schedule of expenses which shall be borne by both the parties equally. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

8. The Original Petition is ordered in the aforesaid terms leaving the parties to bear their own costs. The application Nos.287 of 2020, 1599 of 2020 & 1600 of 2020 are relegated to the Sole Arbitrator for adjudication under Section 17 of the Arbitration and Conciliation Act, 1996.

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01.03.2021

Index:Yes/No
Speaking/Non-speaking Order
gv

Note: Issue order copy on or before 03.03.2021

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P. RAJAMANICKAM.,J.

gv



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