ODC-9

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

AP/39/2022

M/S. UGRO CAPITAL LIMITED
(FORMERLY KNOWN AS CHOKHANI SECURITIES LTD)
VS
RAJ DRUG AGENCY AND ORS

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 2nd March, 2022.

Appearance:
Mr. Rohit Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Jishnujit Roy, Adv.

Mr. Isaan Saha, Adv.
Mr. Tanish Ganeriwal, Adv.
Ms. Sananda Ganguli, Adv.

The Court:- This is an application under Section 9 of the Arbitration and Conciliation Act, 1996.

The petitioner is inter-alia, engaged in the business of providing financial accommodation and loan facilities. The respondent no. 1 is a proprietorship concern, engaged in inter alia the business of selling pharmaceutical products. The respondent no. 2 is the proprietor of the respondent no. 1. The respondent no. 3 is the next of kin of the respondent no. 2. It is alleged that the respondent no. 4 had been introduced as an associate of the other respondents to the petitioner.

By a Facility Agreement dated 28th November, 2020, the petitioner had advanced a sum of Rs.25,45,000/- to the respondent nos. 1 to 4. Such financial facility was obtained for the business purposes of the respondent no. 1. Under the agreement, the respondents were obliged to pay monthly instalments of approximately Rs.93,934/- with effect from 10th January, 2021 till December 10, 2023. The respondents admittedly received the entire sum of Rs.25,45,000/-. After payment of initial instalments, the respondents refused to make any further payment to the petitioner. In this connection, the petitioner relies on the defaults committed by the respondents under the Payment and Settlement System Act, 2007. It is submitted that the defaults committed by the respondents are in material breach of the contract. In view of the aforesaid, an aggregate sum of Rs.24,40,945.91/- has become due and payable by the respondents to the petitioner particulars whereof are set out at paragraph 19 of the petition. The petitioner has also issued a notice dated October 7, 2021 demanding repayment of the entire outstanding dues payable by the respondents to the petitioner. Hence, this application for protective reliefs.

The respondent nos. 2 and 3 are represented. I find that despite service, the respondent no. 4 has chosen not to appear. It is submitted on behalf of the respondent nos. 2 and 3 that, the respondent no. 2 has been long suffering from *clinical depression*. Accordingly, the respondent no. 2 is not in a physical position to oversee the day to day management of the respondent no. 2. It is further alleged by the respondent nos. 2 and 3 that they have been duped by the respondent no. 4. Furthermore, the signatures appearing in the agreement are not the signatures of the respondent nos. 2 and 3. Accordingly, the respondent no. 2 and 3 have been compelled to initiate both criminal and civil proceeding against the respondent no.4.

I have considered the submissions made on behalf of the parties.

It is an admitted fact that the respondents have duly received the entire advance of Rs.24,50,000/-. The Agreement has prima facie been signed by all the respondents. Under the agreement, the advance was repayable alongwith interest at 19.5% per annum. Initial payments had also been made by the respondents. This would also appear from the Statement of Accounts relied on by the petitioner. Thereafter, the respondents have failed and refused to make any further payment to the petitioner. The documents showing defaults in the payments of installment for the month of September 10, 2021 have also relied on by the petitioner.

I also do not find any merit in the defence of the respondent nos. 2 and 3. The defence of suffering from long term depression is false and pure myth. It is common in such matters that after receipt and appropriation of the entire principal amount, parties choose to delay and procrastinate the matter on frivolous and specious grounds. I also prima facie do not find any substance in the case of the respondent nos. 2 and 3 that they have been duped by the respondent no. 4. On the contrary, it is prima facie apparent that the respondent no. 4 is colluding with the respondent nos. 1 to 3. The filing of the police complaint and the suit before the Learned City Civil Court are obviously orchestrated to create an illusion of a defence.

Hence, I am of the prima facie view that the petitioner has a strong case on merits. The balance of convenience and irreparable injury is also in favour of passing of interim orders for securing the amount in dispute in the arbitration proceeding.

In view of the aforesaid, there shall be an order of injunction insofar as prayers (g) and (h) of the petition is concerned. It is clarified that in respect of the premises no. M-42, Paharpur Road, Garden Reach, Kolkata-700024 since the respondent no. 2 has alleged that the said premises is a joint property, the order of restraint is only limited to the extent of an undivided 14.28% interest of the respondent nos. 2 and 3 in the subject premises.

In view of the aforesaid, AP No. 39 of 2022 stands disposed of.

The parties are directed forthwith to invoke the arbitration clause and take expeditious steps for commencement of the arbitration proceedings.

(RAVI KRISHAN KAPUR, J.)

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