

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 156 OF 2020

Mahindra and Mahindra Financial Services Ltd. .. Applicant

Vs.

Nuruddin Latif Naik and Anr. .. Respondents

Ms. Priya Crasto for the applicant.

Mr. Rajendra Rathod for respondent no.1.

CORAM : G.S. KULKARNI, J.

DATE : AUGUST 23, 2022.

P.C.:

1. This is an application filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, which have arisen under Loan Agreement dated 12 January, 2008. The arbitration agreement between the parties is contained in Clause 26 of the Agreement. The existence of an Arbitration agreement is not in dispute.

2. Earlier the applicant by its advocate’s letter dated 30 September, 2010 had invoked the arbitration agreement and had appointed an arbitral tribunal to adjudicate the disputes between the parties. In the arbitration proceedings, the applicant filed its statement of claim as also an application under section 17 of the Act. As the respondents did not file a statement of defence as also failed to appear before the tribunal, learned arbitrator passed an ex-parte award. The said award was

challenged by respondent no. 1 before this Court by filing a petition under section 34 of the Act. This Court by an order dated 20 March, 2019 had allowed the petition. The applicant filed an appeal challenging the said order, which was dismissed. The Applicant again challenged the order dismissing the appeal before the Supreme Court wherein the Supreme Court by an order dated 14 February, 2020 dismissed the SLP, however, granted liberty to the applicant to file petition under section 11 of the Arbitration and Conciliation Act for appointment of a fresh arbitrator. Hence, the present application is filed.

3. Learned counsel for the respondent has fairly stated that his client would not be averse for appointment of an arbitrator to adjudicate the disputes and differences between the parties.

4. Having due regard to the order dated 14 February, 2020 passed by the Supreme Court dismissing the Special Leave to Appeal (C) No. 3492 of 2020 granting liberty to the petitioner to move a fresh application under section 11 of the Act for appointment of arbitrator in accordance with the Arbitration and Conciliation Act, 1996 as also the respondent consenting for appointment of an arbitral tribunal, the application is required to be allowed. It is accordingly allowed by the following order:

ORDER

- (i) Mr. Anupam Surve, Advocate of this Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which

have arisen under the Loan Agreement dated 12 January, 2008.

(ii) The learned sole arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(iv) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion.

(v) All contentions of the parties are expressly kept open;

(vi) The application is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Anupam Surve, Advocate,
D-1, Jeevan Jyot, 1st floor,
18/20, Cawasji Patel Street,
Fort, Mumbai – 400 001.
Mob. No. 9819855561
Email: anupamsurve@gmail.com

[G.S. KULKARNI, J.]