

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

COMM. ARBITRATION APPLICATION NO. 8 OF 2022

Adani Capital Private Ltd. ..Applicant
Vs.
Yashwant Parasmal Dugar & Ors. ..Respondent

Mr. Manoj Prajapati a/w Ms. Pooja Tripathi i/b Mohit Gadkari & Co. for the applicant.

CORAM : G.S. KULKARNI, J.
DATE : 21 July, 2022.

PC.:

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 for adjudication of disputes and differences which have arisen between the parties under the Letter of Guarantee (for short “**the Agreement**”) dated 21 February, 2019. The arbitration agreement between the parties is contained in clause 12 of the letter of guarantee reads thus:

JURISDICTION

- (a) All disputes, differences, claims and questions whatsoever arising out of this Guarantee or the breach, termination or invalidity hereof between the Parties (“**Dispute**”) shall be resolved through arbitration and in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (including any statutory modification or re-enactment thereof from the time to time) for settlement of the Dispute.
- (b) The Dispute shall be referred to a sole arbitrator, to be jointly appointed by both the Guarantor and the Company. The arbitration proceedings shall be held at Mumbai in the English Language.
- (c) The arbitrator’s award shall be: (a) in writing and shall contain reasons for the decision and (b) binding on the Parties and enforceable in any competent court of law. The award shall allocate or apportion

the costs of the arbitration as the arbitrator deems fair. The Company shall be entitled to seek interim relief from the courts of India.

(d) Neither the existence of any Dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Guarantor of his/her/its respective obligations under this Guarantee. The pendency of Dispute in any arbitration proceeding shall not affect the performance of the obligation under this Guarantee.

2. It is a case of the applicant that one Mitashi Edutainment Private Limited (for short '**Mitashi**') has entered into a facility agreement with the applicant on 21 February, 2019. The applicant has contended that Mitashi defaulted in making repayment under the said agreement. The applicant has contended that in view of Mitashi's default in repayment of the amount borrowed by Mitashi, an amount of Rs.1,56,16,075/- has become due and payable by Mitashi. The applicant states that Mitashi is undergoing Corporate Insolvency Resolution Process being subject matter of C.P(I.B) No. 569 of 2020 under the orders of the NCLT dated 20 July, 2021. The proceedings in that regard are stated to be pending before the National Company Law Tribunal.

3. The applicant has contended that the respondent under the agreement in question is the guarantor who has guaranteed re-payment of such amount on the default of the principal borrower-Mitashi. In these circumstances, the applicant called upon the respondent to make good the default amount, however, without any success. The applicant accordingly by its letter dated 18 August, 2021 invoked the arbitration agreement. The respondent did not come forward and/or agree to the appointment of an arbitral tribunal. In these circumstances, the present application came to be filed.

4. On 19 April, 2022 when this application was listed for hearing, the respondent was represented by Advocate Ms.Drashti Ajmera, who requested the Court to adjourn the proceeding for a reply affidavit to be filed. Accordingly, the proceedings were adjourned to 26 April, 2022 with a direction that the reply affidavit be served on applicant well in advance. Thereafter, when the proceedings were listed on 19 July, 2022, none appeared for the respondent, also no reply affidavit has been filed. It thus appears that the respondent is not interested to contest the present application. Consequently, the averments as made in the present application in so far as the reliefs prayed for are concern, are required to be taken as not in dispute.

5. As noted above there exists an arbitration agreement between the the parties as also there is lawful invocation of the arbitration application by the applicant's Advocate letter dated 18 August, 2021. Thus the requirements for this Court to exercise jurisdiction under Section 11(6) of the Act are eminently present. In the above circumstances, the application is required to be allowed. It is accordingly allowed by the following order.

ORDER

(i) Mr. Farhan Dubhash, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Letter of Guarantee dated 21 February, 2019.

(ii) The learned sole prospective arbitrator, fifteen days 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 prospective sole arbitrator;
- (iv) All contentions of the parties on merits of the matter are expressly kept open;
- (v) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees payable to arbitrators) Rules, 2018, and shall be borne by the parties in equal proportion;
- (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. Farhan Dubash, Advocate
"105, Bhagyoday, 1st floor,
79 Nagindas Master Road,
Fort, Mumbai-400023.
Mobile: 9820506685
Office: 65657890

[G.S. KULKARNI, J.]