



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

COMMERCIAL ARBITRATION APPLICATION (L) NO. 5347 OF 2021
WITH
ARBITRATION PETITION NO. 58 OF 2022

Tata Capital Financial Services Ltd.

...Applicant

Versus

Shree Apparels & Ors.

...Respondents

- Ms. Bharti Bhanusali i/b FZB & Associates, for Applicant.

CORAM : MANISH PITALE, J

DATE : 11th SEPTEMBER, 2023

P. C. :

1. In these proceedings, an application under Section 11 of the Arbitration and Conciliation Act, 1996 and a petition filed under Section 9 thereof are listed. The parties in both the proceedings are the same.

2. The Applicant/Petitioner relies upon an arbitration clause contained in a Term Loan Agreement dated 13th October, 2016, executed between the Applicant and Respondent No. 1, wherein Respondent Nos. 2 and 3 are Guarantors.

3. Disputes arose between the parties, as the Respondent No. 1 defaulted.

4. In the petition filed under Section 9 of the said Act, the Respondents had to be served by substitution, by way of publication.

Even in the application filed under Section 11 of the said Act, as per order dated 21st August, 2023, the Applicant had to take steps for substituted service through publication.

5. Affidavit of service is already filed on record showing that the Respondents have been indeed served by way of substituted service through publication in two newspapers, one English and one Tamil, having circulation at Chennai.

6. Despite service in both the proceedings, the Respondents have chosen not to appear before this Court.

7. In that light, this Court heard the learned Counsel for the Applicant/Petitioner. The Term Loan Agreement on record clearly shows that clause 23 thereof provides for resolution of disputes between the parties through Arbitration. The Applicant issued invocation notice dated 17th March, 2020 to the Respondents. The Respondents sent their reply to the notice, *inter alia*, stating that they are not willing to participate in arbitration before any arbitrator that may be appointed by the Applicant. Therefore, the procedure for appointment of arbitrator failed, necessitating filing of the present application.

8. This Court is convinced that in the aforesaid position on facts, this Court can exercise jurisdiction under Section 11(6) of the

said Act, for appointment of Arbitrator.

9. A perusal of the arbitration clause would show that the Applicant is entitled to unilaterally appoint a sole Arbitrator. This stipulation clearly falls foul of Section 12(5) of the aforesaid Act. But, the Applicant/ Petitioner before this Court is ready for appointment of a neutral person as the Arbitrator.

10. In view of the above, this Court is convinced that the application under Section 11 of the said Act can be allowed by appointing a sole Arbitrator. Considering the extent of claims raised by the Applicant, it would be appropriate that an Advocate practicing in this Court is appointed as the sole Arbitrator for resolution of disputes between the parties.

11. Accordingly, Mr. Jamsheed Master, Advocate, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

*Mr. Jamsheed Master,
Chamber of Mr. Dinyar Madon
Feroo Building 2nd Floor, 137, M.G. Road,
Fort, Mumbai - 400 001.
masterjamsheed@gmail.com*

12. The Applicant/Petitioner undertakes to inform the learned Arbitrator, at the earliest, about the order passed today.

13. Learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) read with Section 12(1) of the said Act, to the Prothonotary and Senior Master of this Court, within four weeks from today.

14. The Fees of the learned Arbitrator shall be as per Schedule IV to the said Act.

15. All questions are kept open for decision of the learned Arbitrator.

16. In view of the appointment of the sole Arbitrator, this Court is of the opinion that the petition filed under Section 9 of the said Act, can be converted into an application under Section 17 thereof, to be placed before the learned Arbitrator. Accordingly, it is directed that the petition filed under Section 9 of the said Act, is converted into an application under Section 17 thereof, and the same be placed before the learned Arbitrator for further consideration and orders.

17. The application under Section 11 of the said Act and petition filed under Section 9 thereof, stand disposed of in above terms.

(MANISH PITALE, J.)