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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.68 Of 2023

Aditya Birla Finance Limited] .. Applicant

vs.

On Quest Merchandising India Pvt. Ltd.&ORs.] .. Respondents

Mr.Rushabh Sheth i/b Shashank Mishra, for the Applicant.

Mr.Yogesh Dandekar a/w Harshita Jangid for Respondent Nos.1 to 4.

CORAM : BHARATI DANGRE, J

DATE : 26th February, 2024.

P.C.

1] The Affidavit in Reply filed by the learned counsel for the Respondent is taken on record.

2] The Respondent No.1 approached the Applicant, Aditya Birla Finance Limited, for availing a credit facility for meeting its working capital needs and accordingly a sanction letter was issued, sanctioning facility to the tune of Rs.6 Crores.

In consequence thereof, Loan Agreement dated 25.09.2017 was signed by Respondent No.1 and it agreed to the terms and stipulations contained therein.

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The Loan Agreement clearly contemplated resolution of disputes arising, directly or indirectly, under the Agreement, including any dispute as to any amount outstanding, to be resolved amicably and if it could not be so resolved, adopting the process of arbitration, under the Arbitration and Conciliation Act, 1996.

3] Since the amount became due and payable under the said facility, a statutory demand notice under Section 13(2) of the SARFAESI Act was issued by the Applicant to the Respondent on 18.06.2021, calling upon it to clear the dues, of Rs.6,69,20,183.11 as on 07.06.2021.

4] Pursuant thereto, it is specific stand taken by the learned counsel for the Respondent that the Applicant sold the assets in the hands of the Respondent and was able to recover the amount of Rs.3,30,00,000/-.

It is, in the wake of this exercise, the submission of the learned counsel for the Respondent is, it did not resist the action under SARFAESI and once the part amount is recovered, it is not open for the Applicant to prosecute its remedy of arbitration, which though was available under the Loan Agreement.

5] According to the learned counsel Mr. Rishabh Sheth an amount of Rs.4,75,37,390.66 is outstanding as on 28.07.2023 alongwith TDS and prepayment charges as applicable and, therefore, since the dispute still persist between the parties, by relying upon the specific wording in clause (n) of the Loan Agreement, which contemplate the reference of the dispute between the parties as to “any amount outstanding”, the dispute must go for arbitration, for recovery of the amount particularly since the Respondent is disputing its liability for the said amount.

6] Considering the rival submissions and on perusal of the clause contained in the Loan Agreement, I have no doubt in my mind, that for the balance amount which has remained unpaid till date, the dispute persist between the parties and for this purpose a reference to arbitration is imperative, particularly when arbitration is invoked.

Merely because some amount has been recovered by the Applicant through the action under SARFAESI Act, the same shall not preclude it from referring the dispute to Arbitrator, since the disputes do exist.

7] In the aforesaid circumstances, I deem it appropriate to appoint

Advocate Mr. Mandar Soman as an Arbitrator, under the following terms and conditions :-

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Prothonotary and Senior Master of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

All rights and contentions of the parties are kept open.

[BHARATI DANGRE, J]