

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

COMM. ARBITRATION APPLICATION NO. 204 OF 2022

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Jana Small Finance Bank,
Through its Authorized Person,
Mr. Anil Arjun Manjulkar

.. Applicant

Versus

Bank of Maharashtra

...Respondent

Ms. Shreya Jha a/w. *Ms. Aparna Maurya i/b Adv. Jayesh Mestry,*
Advocate for Applicant.

None for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MAY 10, 2024.

P C :

1. This Application seeks appointment of an arbitrator to adjudicate disputes and differences between the parties arising out of assignment of debt from the books of the Applicant to the books of the Respondent, both of whom are banks. The assignment was effected pursuant to an

agreement dated 30th December, 2015, in which clause 7.6 contains the arbitration agreement, which reads thus :

7.6 Arbitration and Jurisdiction

(a) Any dispute, controversy of claims arising out of or relating to this Deed or the breach, termination or invalidity thereof, shall be settled by arbitration of a sole arbitrator jointly appointed by the Parties, or if the Parties are unable to agree upon an arbitrator, to the arbitration of 3 (three) arbitrators, 1 (one) to be appointed by each disputing Party and the third to be appointed by the 2 (two) arbitrators so appointed. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 of India. ("Arbitration and Conciliation Act, Act") or any modification, amendment consolidation or re-enactment thereof. The arbitrator/s will have power to regulate their own procedure, including summary powers.

(b) The place of arbitration shall be at Mumbai, India and any award whether interim or final, shall be made, and shall be deemed for all purposes between the Parties to be made in Mumbai, India.

(c) The award of the arbitrators shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled to enter judgment thereon. The Parties further agree that such enforcement shall be subject to the provisions of the Arbitration and Conciliation Act.

(d) Subject to the aforesaid, for all matters for which the courts of law would have jurisdiction including without limitation for an application for the appointment of an arbitrator under the provisions of section 11 of the Arbitration and Conciliation Act, the courts of law at Mumbai, India shall have exclusive jurisdiction.

2. On the same date, parties also entered into a "Servicer Agreement", which too contains an arbitration agreement in clause 12.2 thereof, which reads thus :

12.2 Arbitration and Jurisdiction

(a) Any dispute, controversy of claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration of a sole arbitrator jointly appointed by the

Parties, or if the Parties are unable to agree upon an arbitrator, to the arbitration of three arbitrators, one to be appointed by each disputing Party and the third to be appointed by the two arbitrators so appointed. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 of India. ("Arbitration and Conciliation Act, Act") or any modification, amendment consolidation or re-enactment thereof. The arbitrator/s will have power to regulate their own procedure, including summary powers.

(b) The place of arbitration shall be at Mumbai, India and any award whether interim or final, shall be made, and shall be deemed for all purposes between the Parties to be made in Mumbai, India.

(c) The language of the arbitration proceedings shall be English.

(d) The award of the arbitrators shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled to enter judgment thereon. The Parties further agree that such enforcement shall be subject to the provisions of the Arbitration and Conciliation Act.

(d) Subject to the aforesaid, for all matters for which the courts of law would have jurisdiction including without limitation for an application for the appointment of an arbitrator under the provisions of section 11 of the Arbitration and Conciliation Act, the courts of law at Mumbai, India shall have exclusive jurisdiction.

3. Learned Counsel for the Applicant submits that arbitration had been invoked on 1st July, 2021 protesting the withholding of amounts due to the Applicant, by the Respondent, and recommending the name of reputed Learned Senior Counsel of the Supreme Court as a Sole Arbitrator. In reply, the Respondent Bank accused the Applicant of various defaults under the Servicer Agreement but did not deny the existence of the arbitration agreement.

4. In reply to the Application before this Court, the Respondent filed

an affidavit dated 23rd November, 2021, which in fact, alleges breach of the aforesaid two agreements dated 30th December, 2015 by the Applicant, but once again, not denying the existence of an arbitration agreement. Instead, the Respondent alleged that a party that violates the contract, loses its right to invoke arbitration.

5. Way back on 7th December, 2021, a Learned Single Judge of this Court had directed the officials of the banks to attempt an amicable resolution and tried to impress upon the parties that they must resolve their disputes commercially. On 14th December, 2021, it was recorded that the parties had met twice and were likely to meet yet again and requested that the matter be stood over to 11th January, 2022. It appears that there was no listing on 11th January, 2022, and the matter then came up on 20th August, 2023 and was stood over to 11th September 2023, on which date too the matter was not listed. The Application has remained pending for the last three years. It is essentially a commercial dispute between two banks which should be capable of being resolved in arbitration proceedings during which proceedings too, the parties are free to arrive at a settlement. In these circumstances, I see no reason to keep the Application pending any further.

6. The Application is allowed in the following terms :

(a) Mr. Nikhil Rajani, an Advocate of this Court, is hereby appointed as the Sole Arbitrator to decide the disputes and differences between the parties arising out of and/or in connection with and/or in relation to the relevant agreements dated 30th December, 2015, referred to above.

(b) A copy of this order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from this order becoming available to him. The contact particulars of the Learned Sole Arbitrator are as follows :

Mr. Nikhil Rajani,
Mobile No. 9819866058
Email id : nikhilrajani81@gmail.com

(c) The Learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the

same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

(d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication particulars shall be provided by all sides to the Learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as mobile numbers of the respective Advocates.

(f) The parties have agreed that all Arbitral costs and fees of the Arbitrator will be borne by the parties equally and will be subject to any final Award that may be passed by the Tribunal.

(g) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It shall be open to the Arbitral

Tribunal to conduct the proceedings through online mode.

7. The above Application is accordingly disposed of.
8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]