

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 261 OF 2024

Aditya Birla Finance Limited ...Petitioner

Versus

Naga Sharath ...Respondent

WITH

ARBITRATION APPLICATION (L) NO. 22179 OF 2023

Aditya Birla Finance Limited ...Applicant

Versus

Naga Sharath ...Respondent

*Ms Tikshita Modi, with Jenny Somaiya, i/b Akhil Modi & Associates, for
the Petitioner/Applicant.*

CORAM: ARIF S. DOCTOR, J

DATED: 4th September 2024

PC:-

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act 1996.

2. Ms Modi, Learned Counsel appearing on behalf of the Petitioner has invites my attention to Personal Loan Agreement entered between

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2024.09.05
18:41:55 +0530

Petitioner and the Respondent for the sum of Rs.26 Lakhs. She submits that the said Agreement contains an Arbitration Clause.

3. She further submits that on account of the defaults that have been committed by the Respondent, in terms of the Personal Loan Agreement, the Petitioner was constrained to address a Loan Recall Notice dated 28th July 2023 by which the Respondent was directed to call upon to make payment of Rs.25,34,475/-, as also failing which, an Arbitration proceedings will be initiated against the Respondent. She submits that the said notice has remained unresponded, though served upon the Respondent. She submits that the Respondent has even refused to receive the papers and proceedings of this Application.

4. In these facts and circumstances of this case, she submits that this Court will appoint an Arbitrator to decide the disputes and differences between the parties arising out of the Personal Loan Agreement.

5. After having heard Learned Counsel appearing for the Petitioner and on perusing the record, I am satisfied that there exists an Agreement with an Arbitration Clause which today has remained undisputed. The Respondent though served has chosen not to appear. I therefore find no reason why I should not appoint an Arbitrator as prayed for.

6. The Petition is therefore allowed in terms of prayer clause (a) which reads as follows.

“(a) In terms of the arbitration clause as contained in the Loan Agreement dated 30 November 2022, this Hon’ble Court may kindly be pleased to appoint a sole arbitrator, to adjudicate the claims and dispute between the Applicant and the Respondent.”

7. In view of this, I dispose of the present Application by appointing Ms Aakanshka Saxena, Learned Advocate, to act as the Sole Arbitrator to decide the disputes and differences between the parties under the Personal Loan Agreement on the following Terms and Conditions:

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Ms Aakansha Saxena, Learned Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Personal Loan Agreement.
- (b) Communication to Arbitrator of this order:**
 - (i)** A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
 - (ii)** The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses.

Arbitrator **Ms Aakanksha Saxena,
Learned Advocate.**

Address Chambers of Mr. Ashish
Kamat, Senior Advocate, 501,
5th Floor, Oval House, British
Hotel Lane, Nagindas Master
Road, Opposite Commerce
House, Fort,
Mumbai 400 001.

Mobile 8657517561

Email Aakanksha.saxena03@gmail.c
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- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) Contact/communication information of the parties.** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) Section 16 application.** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) Interim Application/s:**

 - (i)** Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii)** The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) Fees.** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

- (i) **Sharing of costs and fees.** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (k) **Venue and seat of arbitration.** Parties agree that the venue and seat of the arbitration will be in Mumbai.

8. The Application is disposed of in these terms. No costs.

9. Given that today there is an admitted outstanding of the loan amount and in fact the Respondent is consciously refusing to appear in this Court or to respond to the Notice issued by the Petitioner, I also deem it fit to allow the Petition No. 261 of 2024 in terms of the prayer clauses (a) and (b) which reads thus:

“(a) That pending the hearing and final disposal of this petition and arbitration proceedings, the Hon’ble Court be pleased to order and direct the Respondent, to file their respective comprehensive affidavit disclosing on oath the assets both movable and immovable held by them jointly and or severally including details of all bank accounts (with account numbers, Bank, Branch etc) and all the amounts lying in the Bank accounts

within a period of 2 weeks from the date of the order or within such time as this Hon'ble court may deemed fit;

(b). That pending the hearing and final disposal of this petition and arbitration proceedings, the Hon'ble Court be pleased to order and direct the Respondent, to file their respective comprehensive affidavit disclosing on oath all debts and receivables payable by third parties to the borrower/s/Respondent with their precise and exact addresses within a period of 2 weeks from the date of the order or within such time as this Hon'ble court may deemed fit;"

10. The Disclosure Affidavit is to be filed within a period of two weeks from today.

(ARIF S. DOCTOR, J)