

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.134 OF 2024

Tata Capital Limited

...Applicant

Versus

Cool World Global Distributors Private Limited &

...Respondents

Ors

Ms Nidhi Mistry, with *Gaurav Jangale, i/b IV Merchant & Co, for the Applicant.*

CORAM.

ARIF S. DOCTOR, J

DATED.

4th September 2024

PC:-

1. The present Application is filed under Section 11 of the Arbitration and Conciliation Act 1996.

2. The Respondent though entered appearance through its Learned Counsel, the Respondent and its Learned Counsel are not present in Court when the matter was called out today.

3. The Learned Counsel on behalf of the Petitioner invites my attention to a Sanction Letter dated 17th July 2020 by which the 1st Respondent was granted a loan facility of Rs.98,78,000/-. She then invites my attention to the Agreement for Term Loan and conditions in respect of said loan granted to the 1st Respondent and the said

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Agreement contains an Arbitration Clause. She submits that in lieu of defaults which had been committed by the Respondents in making repayment under the loan, the Petitioner had on 21st August 2023 issued a Loan Recall Notice which she submits, returned unserved. She submits that therefore on 25th September 2023, the Petitioner has invoked Arbitration, however the said letter was also not responded by the Respondents. It is thus, she submits that today the Petitioner is entitled to appoint an Arbitrator under the terms of Agreement for Term Loan.

4. Having heard the Learned Counsel appearing for the Applicant and perusing papers, I am satisfied that there exists an Arbitration Clause between the parties. It is also clear that the same was duly invoked. The Respondents though served have chosen not to appear and contest the appointment of the Arbitrator or disputes and averments made in the Petition.

5. Hence the Application is allowed in terms of prayer clause (a) which reads thus.

“(a) that this Hon*ble Court be pleased to appoint a Learned Sole Arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes, differences, claims, etc. which have arisen between the parties under Clause 12 of the Agreement for Term Loan dated 21 July, 2020 read with Clause 24 of the Master ‘Terms and Conditions for Term Loan dated 31 December, 2018 as per Section 1 of the Arbitration and Conciliation Act, 1996”

6. In view of this, I dispose of the present Application by appointing Mr Rahul Sarda, Learned Advocate, to act as the Sole Arbitrator to decide the disputes and differences between the parties under the Agreement for the Term Loan on the following Terms and Conditions:

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr Rahul Sarda, Learned Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Agreement for the Term Loan.

(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 Rahul Sarda, Learned
Advocate.**

Address 101, 1 Infinity, Cawasji Patel
Street, Next to Mahesh Lunch
Home, Fort,
Mumbai 400 001.

Mobile 9372937219

Email rahulrsarda@gmail.com

- (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.

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

(ARIF S. DOCTOR, J)