

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

ARBITRATION APPLICATION NO. 135 OF 2024

TATA Capital Limited .. Applicant.  
v/s.  
SBS Infotech .. Respondent.

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SMITA  
RAJNIKANT  
JOSHI  
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Adv. Gaurav Jangle i/b. I. V. Merchant & Co., for the Applicant.

**CORAM: FIRDOSH P. POONIWALLA, J.**  
**DATE : 14<sup>th</sup> DECEMBER, 2024.**

**PC:-**

This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”), seeking appointment of an Arbitrator to arbitrate upon all disputes and differences arising between the parties.

2 The parties have entered into three Agreements. The First Agreement is the Loan-cum-Guarantee Agreement dated 6<sup>th</sup> June, 2022. Clause 12 of the said Agreement contains the Arbitration Agreement and reads as under:-

*“ If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T & Cs on alleged breach of the Facility Document or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitration to be appointed as per the procedure below and to be held at such place as agreed by the parties in*

*Serial No.17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration (“Claimant”) shall address a notice to the other Party (“Respondent”) suggesting the name of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience. The Respondent shall either*

*(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice (“Notice Period”); or*

*(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Periods*

*However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.*

*In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the Arbitrator shall be final and binding on all the parties concerned. The cost of Arbitrator shall be borne by the Obligor/s.”*

3           The parties have also entered into Master Terms and Conditions dated 31<sup>st</sup> December, 2018. Clause 23 of the said Agreement contains the Arbitration Agreement, which reads as under:-

*“23:- If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and*

*liabilities of the parties under the T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held in the place as mentioned in the Facility Documents in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender; The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Dealer.”*

4           The third Agreement entered into between the parties is a Deed of Hypothecation dated 6<sup>th</sup> June, 2022. Clause 7 of the said Agreement contains the Arbitration Agreement between the parties, which reads as under:-

*“7:- If any dispute, difference or claim arises between any of the Borrower(s)/Security Provider(s) and the Lender in connection with the Facility and/or the Facility Documents, the same shall be settled by arbitration to be held in the place as mentioned at Serial No. 9 of Annexure 1 hereto in accordance with the Arbitration and Conciliation Act, 1996 and in the manner as set out in the T&Cs.”*

5           Disputes and differences arose between the parties, and by Loan Recall Notices dated 23rd August, 2023, the Applicant recalled the loans and also invoked Arbitration. Further, by a letter dated 12<sup>th</sup> September, 2023 addressed to the Respondent, the Applicant again invoked Arbitration under the said three Agreements, nominated its Arbitrator and called upon the Respondent to appoint its Arbitrator.

6           The Applicant did not receive any response from the Respondent to the said notice.

7           The Respondent, though served, has not appeared.

8           I have heard the learned Counsel for the Applicant. As stated herein above, there exists a valid Arbitration Agreement in each of the aforesaid three Agreements i.e. Loan-cum-Guarantee Agreement dated 6<sup>th</sup> June, 2022, Master Terms and Conditions dated 31<sup>st</sup> December, 2018 and Deed of Hypothecation dated 6<sup>th</sup> June, 2022.

9           The letters addressed by the Applicant to the Respondent shows that dispute and differences had arisen between the parties. By letters dated 23<sup>rd</sup> August, 2023 and 12<sup>th</sup> September, 2023 the Applicant has invoked Arbitration. In my view, in these circumstances, an Arbitrator is required to be appointed to arbitrate upon the disputes and differences between the parties.

10          In these circumstances, the following orders are passed:-

- (a) Mr. Aditya Bapat, an Advocate practising in this Court, is appointed as the Arbitrator to arbitrate upon all the disputes and differences arising between the parties under the said Loan-cum-Guarantee Agreement dated 6<sup>th</sup> June, 2022, Master Terms and Conditions dated 31<sup>st</sup> December, 2018 and Deed of Hypothecation dated 6<sup>th</sup> June, 2022. The contact details of Mr. Aditya Bapat, who is appointed as an Arbitrator, are as under:-

Name :- Mr. Aditya Bapat, Advocate  
Mobile No. :- 98223 03900  
Email :- adityasbapat@gmail.com  
Address :- 2<sup>nd</sup> Floor, Wadia Building,  
Near Das Alcove, Fort,  
Mumbai 400 001.

- (b) The Advocate for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order;
- (c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order.
- (d) The Arbitrator so appointed to make the disclosure as required under the provisions of the Act within a period of one week from the date of intimation of his appointment;
- (e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard.

11           The Arbitration Application is disposed of in the aforesaid terms. There will be no order as to costs.

**(FIRDOSH P. POONIWALLA ,J.)**