

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

COMM. ARBITRATION APPLICATION NO.144 OF 2024

Aditya Birla Finance Ltd., .. Applicant.
v/s.
Nandini S N .. Respondent.

Mr. Mihir Beradia i/b. VM Legal, for the Applicant.

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CORAM: FIRDOSH P. POONIWALLA,J.
DATE : 9th SEPTEMBER, 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 under the Deed of Guarantee dated 24th February, 2021 entered into between the parties (“the said Deed of Guarantee”).

2 By the said Deed of Guarantee, the Respondent stood as a guarantor for Channel Finance Facility, up to an amount of Rs.2 Crores, provided by the Applicant to Niharika Trading Corporation. Clause 28 of the said Deed of Guarantee contains an Arbitration Agreement and reads as under:-

“That all disputes, differences and /or claims arising out of these presents or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Mumbai in accordance with the Arbitration and

Conciliation Act, 1996 as provided for under the said facility/ies agreement(s). ”

3 It is the case of the Applicant that the loan account of the borrower was declared as NPA on 26th October, 2022.

4 Thereafter, the Applicant issued a Notice dated 2nd January, 2023 to the Respondent, invoking the guarantee provided by the Respondent under the said Deed of Guarantee and called upon the Respondent to pay an amount of Rs.1,59,50,351.55/-.

5 The Respondent failed to pay any amount under the said Deed of Guarantee nor did she reply to the said Notice dated 2nd January, 2023.

6 In these circumstances, by its Advocate's letter dated 15th November, 2023, the Applicant invoked Arbitration under Clause 28 of the said Deed of Guarantee and called upon the Respondent to agree to appoint an Arbitrator within a period of 30 days from the receipt of this notice.

7 Despite receiving the said letter dated 15th November, 2023 invoking Arbitration, the Respondent has not replied to the same. In these circumstances, the Applicant has filed the present Arbitration Application.

8 The Respondents have been duly served with a copy of this Application. The Applicant has filed an Affidavit of Service dated 12th March, 2024, proving service of this Application on the Respondents.

Further, the Applicant has also filed Affidavit dated 9th September, 2024, which shows that the Respondent has been intimated about today's hearing. Despite the same, the Respondent has chosen to remain absent today.

9 From the aforesaid, it can be seen that there exists a valid Arbitration Agreement between the Applicant and the Respondent as contained in Clause 28 of the said Deed of Guarantee. Further, disputes and differences have arisen between the parties under the said Deed of Guarantee and the Applicant has invoked Arbitration by its Advocate's letter dated 15th November, 2023. Despite the same, the Respondent has not consented to the appointment of any Arbitrator. In fact, the Respondent has not even replied to the said letter.

10 In these circumstances, an Arbitrator will have to be appointed in order to arbitrate upon the disputes and differences arising between the parties under the said Deed of Guarantee.

11 In the aforesaid circumstances, and for the aforesaid reasons, the following orders are passed:-

- (a) Mr. Darshit Jain, an Advocate practising in this Court, is appointed as the Arbitrator to arbitrate upon the disputes and differences arising between the parties under the said Deed of Guarantee dated 24th February, 2021. The contact details of Mr. Darshit Jain, who is appointed as an Arbitrator, are as under:-

Name :- Mr. Darshit Jain, Advocate
Mobile No. :- 98208 19141
Email :- darshitkain@gmail.com
Address :- 139, Jolly Maker Chambers, 2, Nariman
Point, Above Bank of Bahrain and
Kuwait, Mumbai 400 021.

- (b) The Advocates 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;

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

(FIRDOSH P. POONIWALLA,J.)