

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 195 OF 2024

Protium Finance Limited

...Petitioner

Versus

Vinayaka Eggs Traders Through Its Prop
Shivanandan Raja Nadar

...Respondent

Mr Aniket Suresh Patil, *for the Petitioner.*

Ms Aneeta Vasani, *for the Respondent.*

CORAM: **ARIF S. DOCTOR, J**

DATED: **7th October 2024**

PC:-

SHEPHALI
SANJAY
MORMARE

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by SHEPHALI
SANJAY
MORMARE
Date: 2024.10.09
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1. The present Commercial Arbitration Petition is filed under Section 9 of the Arbitration and Conciliation Act 1996. It arises out of a Loan Agreement dated 31st December 2021 by and under which the Petitioner lent and advanced certain sums to the Respondent-company. Thereafter in lieu of defaults a loan recall cum invocation notice dated 8th February 2024 recalling the entire loan as also nominating an Arbitrator was served. There is no Reply to this invocation notice.

2. Today, after the matter was heard at some length, a suggestion from the Court as to why an Arbitrator could not be appointed. The Learned Counsel appearing on behalf of the Respondent fairly submitted that she was not opposing the appointment of an Arbitrator.

3. Hence, I appoint Mr Aum Kini, Advocate, to act as the Sole Arbitrator decide the disputes and differences between the parties on the following Terms and Conditions.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Aum Kini, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(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/s **Mr Aum Kini, Advocate**

Address 107, Gundecha Chambers NM
Road Near Kandil Hotel, Fort,
Mumbai 400 023

Mobile 9987406868

Email ajkiniadv@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 Petitioners 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) 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 present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** Since the appointment of the Sole Arbitrator is by consent of the parties, the arbitral tribunal's fees shall not be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **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.
- (i) **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.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

4. Given that today there is no dispute to the fact that there is a default under the said loan, however, what is disputed is the quantum which is due and payable, I deem it fit to grant an order of Disclosure as more particularly prayed for in the prayer clause (b) which reads thus:

“(b) That pending the hearing and final disposal of the arbitration proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36 of the Arbitration and conciliation Act, 1996, this Hon’ble Court be pleased to pass interim measures under section 9 of the Arbitration and Conciliation Act, 1996 thereby directing respondents 1 to 3 to submit an affidavit with a list of their properties/assets/bank accounts/lockers etc, which are sufficient to secure the petitioner's claim amount of Rs. 20,66,047.02 /- (Rupees Twenty Lac Sixty Six Thousand Forty Seven and Two Paise Only) as on 19-Mar-24.”

5. Let that Disclosure Affidavit be filed on or before 21st October 2024.

(ARIF S. DOCTOR, J)