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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ARB.P. 1148/2023

BAJAJ FINANCE LIMITED ..... Petitioner

Through: Ms. Shally Bhasin, Mr. Prateek Gupta, Mr. Prateek Yadav, Ms. Rachna Dubey, Advs.

versus

KARVY STOCK BROKING LTD ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

<u>O R D E R</u>

% **21.05.2024**

1. By way of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act the petitioner seeks appointment of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes inter se the parties.
2. The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956 and registered with the Reserve Bank of India ('RBI') as a deposit taking 'non-banking financial institution', engaged in the business of lending and allied activities.
3. Learned counsel for the petitioner submits that the respondent is an expelled trading member/stock broker of the National Stock Exchange

of India Limited ('NSE') and BSE Limited ('BSE'). It is further submitted that the parties entered into various Loan-Cum-Plege-Cum-Guarantee Agreements (Loan Agreements) amounting to a total of Rs.345 crores vide which the petitioner advanced financial facility to the respondent as follows:

Sanction Letter/Agreement Date	***Existing Sanction (Rs.in Crores)***	***Top-up (Rs.in Crores)***	***Total Sanction (represents the aggregate limit) (Rs.in Crores)***
30.12.2014	20	0	20
23.04.2015	20	5	25
21.07.2015	25	10	35
15.10.2015	35	15	50
27.06.2016	50	50	100
20.03.2017	100	100	200
07.09.2018	200	50	250
24.01.2019	250	25	275
30.08.2019	260	85	345

4. It has been submitted that the financial facility was a Loan Against Securities (LAS) and was secured by a pledge of a security/share which was maintained by the respondent in DP Account No. 11458979, named Karvy Stock Broking Limited (BSE) (KSBL account) in favour of the petitioner.
5. The petitioner has filed copies of Loan Agreements, including Sanction Letters, Power of Attorneys, Demand Promissory Notes and

Letters of Continuity for the aforesaid transactions pertaining to the Financial Facility. Learned counsel submits that as per terms of Loan Agreements, more particularly '*Article IV, Covenants, Representations and Warranties*', it was specifically represented that the securities offered by respondent no.1 to the petitioner towards the disbursal of the Financial Facility, were the absolute property of respondent no.1. The respondent no.1 has already provided a written undertaking stating that the securities lying in the KSBL Account were absolutely owned by respondent no.1 and did not belong to any of its clients/constituents. The undertaking was taken to ensure that there are no complications in the event of default or enforcing the securities so offered by the borrower. The petitioner has submitted that unlike any immoveable property, the shares in the demat account are fungible and the lender only relies upon the demat account statement and the statement from the depositories which provides the names of the beneficial owner of shares.

6. Learned counsel for the petitioner submits that between around October-November 2019, the respondents committed persistent defaults with respect to maintenance of the required margin the Loan Account. It is further submitted that various emails were sent to the respondent by the respondent let them know the margin shortfall and to make good on the same by pledging additional security or make cash payment. However, the respondent failed to reply and loan recall dues were sent for the repayment of the total outstanding sum of Rs.344,49,81,608/- within a period of three days, failing which the petitioner would exercise its remedies under the Loan Agreements.

Moreover, it is submitted that SEBI on November, 22, 2019 on the basis of a preliminary report of NSE passed an exparte Ad interim order which reads as follows;

"21. Under the above circumstances, I, in exercise of powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008, by way of this ex parte Advocate interim order, pending forensic audit, hereby issue the following directions:

(i) KSBL is prohibited from taking new clients in respect of its stock broking activities;

(ii) The Depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients' securities by KSBL, are hereby directed not to act upon any instruction given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect;

(iii) The Depositories shall monitor the movement of securities into and from the DP account of clients of KSBL as DP to ensure that clients' operations are not affected;

(iv) The Depositories shall not allow transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) with immediate effect. The transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE; and

(v) The Depositories and Stock Exchanges shall initiate appropriate disciplinary regulatory proceedings against the Noticee for misuse of clients' funds and securities as per their respective bye laws, rules and regulations."

7. In compliance of the aforestated directions, learned counsel submits that the petitioner sent letter to SEBI and NSDL to invoke the pledge and sell the security in KSBL account. However, in lieu of no response, the petitioner approached Securities Appellate Tribunal ('SAT') vide Appeal (L) No.585 of 2019 seeking to set aside the directions contained in paragraph 21(iv) of the ad-interim order,

amongst other ancillary and incidental reliefs.

8. It is submitted that SAT on 03.12.2019 and 09.12.2019 directed SEBI to pay the petitioner and in the interim, further transfer of securities from the KSBL Account, in terms of paragraph 21(iv) of the SEBI Ad-interim order was suspended. However, the SEBI vide order dated December 13, 2019 dismissed the representations made by the petitioner.

9. Learned counsel for the petitioner submits that this order was challenged by the petitioner before the SAT and SAT has allowed the appeal, however, depositories has challenged this before the Supreme Court. The petitioner has submitted that on 23.11.2020, NSE declared the respondent as a defaulter and expelled the respondent from membership. Similarly, BSE also declared respondent no.1 as a default and expelled respondent no.1 from its membership on 24.11.2020.

10. Learned counsel for the petitioner submits on 19.01.2023, the petitioner invoked the arbitration and that the Loan Agreements contain an arbitration clause in Article VII, Clause No.8 of the loan agreement, which stipulates as under:

> *"8. Arbitration*
> *8.1 Any and all disputes arising out of or in connection with this Agreement and the Schedule(s) of Terms/Repayment Schedule/s attached hereto the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the Lender and the award thereupon shall be binding upon the parties to, this Agreement. The place of the arbitration shall be in Delhi, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof."*

11. It is further submitted that the respondent has neither responded to Loan Recall Notice nor the invocation.

12. In terms of order dated 14.05.2024, learned counsel for the petitioner has filed detailed service report.

13. Learned counsel submits that the process through speed post and courier has duly been served. The hard copy of detailed report has been shown. Let it be placed on the record.

14. Learned counsel submits that the e-mail sent on all the email Ids including the one directed on the last date of hearing in para 14 i.e. Compsec@karvy.com have been sent but the same have bounced back. Learned counsel submits that e-mails are bouncing back as the server domain mail has been shut down.

15. The process has duly been sent to the respondent in compliance of Section 3 of the Arbitration and Conciliation Act and the respondents have not appeared despite being served at the given address. The arbitration has duly been invoked vide notice dated 18.01.2023 under Section 21 of the Act and sent at the registered address of the respondents. As per the arbitration clause, the seat of arbitration is at Delhi. The claim amount is around Rs.348 crores.

16. Considering that there exists an arbitration agreement between the parties out of which an arbitrable dispute has arisen and this Court has the territorial jurisdiction, the present petition is disposed of with the following directions:

    i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.

ii) Mr. Justice Ramasubraminan, Former Judge, Supreme Court of India, (Mobile: 9318456789), is appointed as an Arbitrator to adjudicate the disputes between the parties.

iii)The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.

iv)The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi)The parties shall approach the learned arbitrator within two weeks from today.

17. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

MAY 21, 2024/*Pallavi*