



2024:DHC:6462



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1360/2023

KUBER KHERA

.....Petitioner

Through: Ms. Rhea Luthra, Adv.

versus

**EXPERIAN CREDIT INFORMATION COMPANY OF
INDIA PVT. LTD. & ANR.**

.....Respondents

Through: Mr. Dhruv Gupta, Adv. for R-1
Mr. Abhinav Sharma, Adv. for RBI**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****23.08.2024**

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1. This is a petition under Section 11(6)¹ of the Arbitration and Conciliation Act, 1996², for reference of the dispute between the petitioner and the respondents to arbitration.

2. The grievance of the petitioner is that Respondent 1 had not reflected the credit score of the petitioner correctly on its website. It is stated that the petitioner, on accessing the website of Respondent 1 in 2017 was surprised to find that the petitioner was shown as having eight loans pending against him whereas, according to the petitioner,

¹ (6) Where, under an appointment procedure agreed upon by the parties, -

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

² "the 1996 Act" hereinafter

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2024:DHC:6462



he had not availed any loan from any of the financial institutions mentioned on the website.

3. According to the petitioner, there are certain other inaccuracies as well, in the data contained on the website of Respondent 1 in respect of the petitioner.

4. For the limited purposes of this petition, it is not necessary to embark on a discussion of the facts or the points on which the parties join issue.

5. Suffice it to state that that the petitioner seeks resolution of the dispute by arbitration in term of Section 18³ of the Credit Information Companies (Regulation) Act, 2005⁴.

6. On 3 July 2023, the petitioner raised a complaint with Respondent 2 seeking resolution of the dispute by arbitration in terms

³ 18. **Settlement of dispute. –**

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly.

(2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided,—

(a) by the arbitrator to be appointed by the Reserve Bank;

(b) within three months of making a reference by the parties to the dispute:

Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months:

Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), for settlement of their dispute in accordance with the provisions of that Act.

(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

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2024:DHC:6462



of Section 18 of the CICRA. No action having been taken by Respondent 2 for the appointment of an arbitrator to adjudicate the disputes between the petitioner and Respondent 1, the petitioner has instituted the present petition under Section 11(6) of the 1996 Act.

7. Learned counsel for the respondents opposes this petition on maintainability.

8. Mr. Dhruv Gupta, learned Counsel appearing for the Respondent 1 submits that, in view of Section 31⁵ of the CICRA, any petition related to a matter covered by Section 18 can be entertained only by the Supreme Court under Article 32 or by the High Court under Articles 226 and 227. He submits, the present petition under Section 11(6) of the 1996 Act is not maintainable.

9. Mr. Abhinav Sharma, learned Counsel appearing for the Reserve Bank of India⁶ echoes the submission and cites, in this context, the judgments of the Supreme Court in *General Manager (Project), National Highways and Infrastructure Development Corporation Ltd v Prakash Chand Pradhan*⁷, *NHAI v Sayedabad Tea Company Ltd*⁸ and *Chief General Manager (IPC), Madhya Pradesh Power Trading Company Ltd v Narmada Equipments Pvt Ltd*⁹.

⁴ “the CICRA” hereinafter

⁵ **31. Bar of jurisdiction.** – No court or authority shall have, or be entitled to exercise, any jurisdiction, powers or authority, except the Supreme Court and a High Court exercising jurisdiction under Articles 32, 226 and 227 of the Constitution, in relation to the matters referred to in Sections 4, 5, 6, 7 and 18.

⁶ “the RBI” hereinafter

⁷ (2020) 15 SCC 533

⁸ (2020) 15 SCC 161



2024:DHC:6462



10. Ms. Luthra, learned Counsel appearing for the petitioner in rejoinder, submits that the bar of Section 31 would not apply in the present case, as she is not seeking redressal of her grievances under Section 18, but has moved the Court for appointment of an arbitrator as the respondents have not cooperated in that regard.

11. An application for appointment of an arbitrator, she submits, would not be hit by the bar under Section 31 of the CICRA.

Analysis

12. Ms. Luthra sought to place reliance on the judgment of the learned Single Judge of the Madras High Court in *Kirankumar Moolchand Jain v TransUnion CIBIL Ltd*¹⁰, and specifically cited paragraph 2 of the said judgment which reads as under:

“The said contention is misconceived inasmuch as the object and purpose of Section 31 is to preclude parties from seeking redressal of grievances in any manner other than that prescribed in the Act of 2005. Since Section 18 of the Act of 2005 provides for dispute resolution through arbitration, the bar under Section 31 will not apply to proceedings for the constitution of an arbitral tribunal to resolve the dispute in the manner prescribed in the Act of 2005.”

13. The issue in controversy before the Madras High Court in *Kirankumar Moolchand Jain* was completely distinct from that with which we are concerned. The stand adopted before the Madras High Court in that case was that the dispute between the parties was not amenable to resolution by arbitration at all, in view of Section 31 of the CICRA, and that the parties had necessarily to resolve the disputes

⁹ (2021) 14 SCC 548
¹⁰ MANU/TN/7802/2022



2024:DHC:6462



only by way of a writ petition under Article 226 of the Constitution of India. The Madras High Court negated the contention, holding that Section 18 of the CICRA specifically envisaged resolution of disputes by arbitration, and that it could not therefore be sought to be contended that Article 226 was the only avenue available for resolving disputes.

14. In the present case, the dispute engaging us is not whether the dispute between the parties is arbitrable under Section 18 of the CICRA – though the respondents contest this as well – but whether, assuming it is, a petition to appoint an arbitrator can lie under Section 11(6) of the 1996 Act. The respondents contend that, in view of the proscription contained in Section 31 of the CICRA, it cannot. Ms. Luthra contends, *per contra*, that the present petition under Section 11(6) of the 1996 Act is maintainable.

15. Ms. Luthra's submission, though facially attractive, cannot be accepted, specifically because of the use, by legislature, of the expression "matters referred to" and "in relation to" in Section 31. Section 31 proscribes all Courts, except the Supreme Court under Article 32 or the High court *under Articles 226 and 227* from exercising jurisdiction "*in relation to the matter referred to in Sections 4, 5, 6, 7 and 18*". In other words, jurisdiction in relation to the matters referred to and Section 18 of the CICRA, if exercised by the High Court, can be exercised only under Articles 226 and 227.

16. *Ipsa facto*, therefore, the High Court cannot exercise jurisdiction under Section 11(6) of the 1996 Act *in relation to any*

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matter to which Section 18 of the CICRA refers.

17. The issue therefore, reduces to whether the prayer for appointment of the arbitrator, who has to arbitrate in terms of Section 18 of the CICRA, can be treated as a prayer made “in relation to the matters referred to in Sections 4, 5, 6, 7 and 18”.

18. There can be no dispute about the fact that arbitration of the *lis* between the petitioner and the respondents is a matter referred to in Section 18, inasmuch as Section 18 deals with arbitration of the disputes between the parties, and nothing else. Indeed, Ms. Luthra also concedes that the dispute if arbitrable, it is arbitrable under Section 18 of the CICRA. As such, arbitration of the dispute is a matter “referred to” in Section 18.

19. The issue, then, narrows down, further, to whether the prayer for appointment of an arbitrator to arbitrate on the dispute is a matter “in relation to arbitration”. If it is, then it becomes an issue *in relation to* a matter *referred to* in Section 18 and, consequently, amenable to adjudication by the High Court only under Article 226 or 227 of the Constitution of India.

20. The words “in relation to” have been interpreted by the Supreme Court on several occasions. In *Doypack Systems (P) Ltd v UOI*¹¹, the words “in relation to” were held to mean “concerning with” and “pertaining to”. In *State of Karnataka v Azad Coach*

¹¹ AIR 1988 SC 782



2024:DHC:6462



Builders Pvt Ltd¹², it was held that “ ‘in relation to’ are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not to be so construed”.

21. The Supreme Court has consistently held that the expression ‘in relation to’ is an expression of wide and comprehensive import and would embrace within its contours any issue or aspect which is related to the principal issue.

22. Given the interpretation placed by the Supreme Court on the expression ‘in relation to’ in the decisions cited hereinabove, I am of the opinion that the issue of appointment of an arbitrator to arbitrate in terms of Section 18 of the CICRA is decidedly an issue in relation to the matter referred to in Section 18.

23. That being so, if this Court is to exercise jurisdiction, it has to be under Article 226 or 227, and not under Section 11(6) of the 1996 Act.

24. In view thereof, this petition is dismissed as not maintainable, reserving liberty to the petitioner to seek appropriate remedies as are available in law.

C.HARI SHANKAR, J

AUGUST 23, 2024/aky

[Click here to check corrigendum, if any](#)