

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

ARBITRATION APPLICATION NO.323 OF 2024

Avanse Financial Services Limited
A Banking Company registered
under the Companies Act, 1956,
having its register Office at 001 and 002,
Gr. Floor, A Wing, Fulcrum,
Near Hyatt Regency Hotel,
Andheri (East), Mumbai 400099

And

Having its Branch office at 02,03,04,
Ground Floor Dynasty Business Park,
J B Nagar, Andheri East, Mumbai - 400072

... Applicant

Versus

1. Tamanna Gusain
House No. 244, Shankar Marg
Gali No. 4, Mandawali,
Delhi - India – 110092.
2. Birendra Singh
House No. 244, Shankar Marg
Gali No. 4, Mandawali, Delhi
India – 110092.
3. Meena Bisht
113-B, 1st Floor, Pocket 6 MIG
Mayur Vihar, Phase - 3, Delhi
India – 110096.
4. Rashmi Gusain
House No. 244, Shankar Marg
Gali No. 4, Mandawali, Delhi
India – 110092.

... Respondents

Ms. Bijal Gogri i/b. GNP Legal, for the Appellant.
Mr. C.S. Lamba, for the Respondent No.3.

CORAM : ADVAIT M. SETHNA, J.
DATE : 25 FEBRUARY 2025

ORAL JUDGMENT:-

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“**ACA**” for short) for appointment of an arbitrator. At the very outset, it may be noted that both the learned counsel are *ad idem* to the fact that the parties are governed by an arbitration clause contained in the Education Loan Agreement dated 30 January 2021 (“**Agreement**” for short) duly executed by the applicant and the respondent in these proceedings. The arbitration clause in the Agreement reads thus :-

“16.1.1 All disputes, differences, claims and question, whatsoever 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 referred to the arbitration of Sole Arbitrator to be named and/ or appointed by the Lender/ AVANSE and the decision (interim award/award) of the Arbitrator shall be final and binding upon the parties hereto. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof or any statute enacted for replacement thereof. The venue of such arbitration shall be a place within the territory of India and shall be a place that the Lender/AVANSE may deem convenient for the purposes of administering the dispute in relation to this Agreement, Transaction Documents and/or the Loan, and the Borrower hereby agrees to abide by the choice to the Lender/AVANSE in relation to the place of arbitration. The language of the arbitration shall be in English.”

2. It may be also noted that along with the above, the jurisdiction clause in the present case which reads thus :-

“16.2 Jurisdiction

1.1 Subject to forgoing clause, the Parties agree that the courts and/or tribunals as a place where Lender’s registered office is

located shall have jurisdiction in respect of any matter arising out of or in connection with this Agreement. This provision is for the benefit of the Lender only. As a result, Lender shall be entitled to take proceedings arising out of or in connection with this Agreement in any other courts or tribunals with jurisdiction. Accordingly, the Lender may take concurrent in any number of jurisdictions.”

3. A perusal of the arbitration clause indicates that the arbitration shall be conducted within the territory of India and pertinently at a place that the lender, i.e., applicant may deem it convenient for the purposes of administering the disputes in relation to the education loan agreement. In view thereof, a perusal of such clause would make it clear that it is left to the lender/applicant to nominate the venue for the purposes of arbitration as stipulated under the arbitration clause in the education loan agreement.

4. There has been some dispute with regard to the place/venue of arbitration as submitted by the learned counsel appearing for the parties. It was also pointed out that earlier a Sole Arbitrator was appointed in this very matter who conducted the arbitration in Mumbai. However, on 3 May 2023, he recused himself on the ground that he was unilaterally appointed by the lender i.e. the applicant, which according to the law settled by the Supreme Court in *Perkins Eastman Architects DPC and Anr. vs. HSCC (India) Limited*¹ and *TRF Limited v. Energo Engg. Projects Ltd.*² subsequent decision is legally tenable and not enforceable as such arbitrator arrived by one party is ineligible to act as such.

5. In the above backdrop, the present application under Section 11 was filed

1 (2020) 20 SCC 760

2 (2017) 8 SCC 373

on 12 May 2023. The learned counsel for the parties would submit that a reply dated 6 February 2025 has been filed by the respondent and a rejoinder dated 20 February 2025 by the applicant to such reply, which are on record in the present proceedings. It is to be noted that the existence of the arbitration clause as reproduced (Supra) is clearly not disputed by the parties to the said proceedings. The parties have agreed that the disputes/differences arising out of the Agreement may be referred to a learned sole arbitrator to be appointed by this Court. The learned counsel for the parties fairly state that parties are in agreement to the venue of such arbitration to be Mumbai. Considering the totality of the facts and circumstances of the case, it is just, fair and expedient to appoint Mr. Abhishek M. Karnik, Advocate of this Court as the learned Sole Arbitrator under Section 11 (6) of the ACA to adjudicate upon the disputes and differences arising out of the Education Loan Agreement dated 30 January 2021.

6. The learned counsel for the applicant would submit that the principal amount claimed is about Rs.14,99,651/- and the total outstanding as on 9 February 2023 would be Rs.17,29,195/-. Needless to state that such amounts are disputed by the learned Advocate for the respondents. The parties are at liberty to urge all contentions before the learned sole arbitrator.

7. In light of above, I deem it fit and proper to pass the following order:-

Appointment of Arbitrator:-

Advocate Mr. Abhishek M. Karnik (Bombay High Court) is hereby

appointed as learned sole arbitrator.

- i. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within ten (10) days 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. Abhishek M. Karnik,
 Address : C/o. Oval House, British Hotel Lane,
 Off. Nagindas Master Road,
 Fort, Mumbai – 400 001.
 Mobile : 99303 51706
 Email : adv.amkarnik@gmail.com

- iii. **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy, soft copy, the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to Advocates for the parties as soon as possible. The Advocates for the applicant will arrange to file the original statement in the Registry with the Prothonotary & Senior Master (Original Side) within three (03) days of it being made available by the learned sole arbitrator.
- iv. **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator decides to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- v. **Interim Application/s:** Interim Application, if any, filed under

Section 17 of the Arbitration and Conciliation Act, 1996 shall be decided by the arbitrator, if and so when referred.

- vi. **Fees:** The arbitral tribunal's fees shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996.
- vii. **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration shall be in Mumbai.
- vii. **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 proportion.

8. The Arbitration Application No.323 of 2024, is allowed as per prayer clause (a) and in the above terms. No order as to costs.

[ADVAIT M. SETHNA, J.]