

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.254 OF 2024
WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.27758 OF
2024

Derivados Consulting Pvt. Ltd.

...Petitioner

Versus

Platinum Buidcom Pvt. Ltd. and Ors.

...Respondents

Mr. Ranjeev Carvalho a/w. Mr. Rohaan Pajnigar for the Petitioner.
Mr. S. R. Nargolkar a/w. Mr. Avinash Joshi and Ms. Neeta Patil for the
Respondent.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: JANUARY 23, 2025

PC :

1. The Commercial Arbitration Petition No.254 of 2024 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*“the Act”*). The Commercial Arbitration Application No.47 of 2025 is an Application under Section 11 of the Act seeking appointment of an arbitrator.

2. Heard Learned Counsel for the parties at length.

3. It is evident, that by an engagement letter dated October 3, 2022 the Petitioner has been engaged as a consultant to assist the Respondents in availing the sanctioned credit from non-banking

financial companies or banks in the sum of Rs.40 crores, and fees in the quantum of 2 % of the sanctioned loan was agreed to be paid to the consultant Petitioner, in the terms set out in the engagement letter.

4. Learned Counsel for the Petitioner submits that from public filings, it is apparent that a finance company called Capri Global has sanctioned, according to him, a sum of Rs.40 crores. This is what is contested by Learned Counsel for the Respondent on the premise that disbursal of Rs.8.75 crores had been made and the same has been repaid.

5. It is seen from a plain reading of the record and from the perspective of Section 9 of the Act, that the parties emphasise multiple competing facts to buttress their respective positions. However, what is evident, *prima facie*, from the engagement letter is that the trigger for payment of fees is the sanction of the facility.

6. Learned counsel for the Respondent submits that the fee amount was not immediately payable and there are milestones to be reached for them to become payable. These are matters of merits that the Arbitral Tribunal shall consider. Learned Counsel for the Respondent submits that the engagement letter cannot at all be treated as an agreement. This too is an issue that can eminently be dealt with by the Arbitral Tribunal under Section 16 of the Act.

7. Taking all the aforesaid facets into account and to balance equities, it is directed that Respondents shall create a Fixed Deposit in the sum of Rs. 50 lakh, and mark a lien on the same in the name of the Prothonotary and Senior Master of this Court, within a period of four weeks from the date on which this order is uploaded on this Court's official website. Such fixed deposit shall abide by such directions as the Arbitral Tribunal, hereby appointed may be pleased to make, whether modifying, varying, altering or even vacating such arrangement once presented with an application under Section 17 of the Act.

8. Consequently, both the captioned proceedings i.e. the Petition under Section 9 and the Application under Section 11 of the Act, are hereby ***finally disposed of*** on the following terms:

A] Ms. Reshmarani Nathani, Learned Advocate of this Court (reshmarani.nathani@chawanchambers.com), is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the

statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

9. Nothing contained in this order is meant to bind the Arbitral Tribunal on the nature of interlocutory reliefs that must obtain during the pendency of arbitral proceedings.

10. With the aforesaid directions both the captioned proceedings are *finally disposed of*.

11. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]