

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.434 OF 2024
ALONG WITH
ARBITRATION APPLICATION (L) NO.4306 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.434 OF 2024

Kotak Mahindra Bank Ltd.

...Petitioner/Applicant

Versus

M/s. Dicky Bags & Ors.

...Respondents

Ms. Tikshita Modi a/w. *Ms. Jenney Somaiya i/b. Akhil Modi & Associates, Advocate for Petitioner.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 10, 2025

P.C :

1. Arbitration Application (L) No.4306 of 2024 has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) while Commercial Arbitration Petition No.434 of 2024 has been filed under Section 9 of the Act.

2. The Application under Section 11 of the Act seeks referral of disputes and differences between the parties in connection with recovery of dues under the Facilitation Agreement dated December 30, 2016 to arbitration.

3. The arbitration agreement is contained in Clause 20 of the said Facility Agreement, which is at Page 39 of the Application. In the interest of brevity, the same is not being reproduced herein. Suffice is to say, that the parties had indicated that Mumbai would be a potential venue for the arbitration.

4. It is seen that a loan was originally extended by Ratnakar Bank Limited to the Respondents in 2016 and the loan account was subject matter of an assignment of loan assets by the said bank to the Applicant by a Deed of Assignment dated December 31, 2019. A Demand Notice was raised on August 28, 2023, to which the Respondents replied claiming that it had no knowledge of the assignment of the loan account from the earlier bank to the Applicant-Bank.

5. Learned Counsel for the Applicant submits that after the assignment of the loan account on December 31, 2019, the Respondents had indeed made payments of dues under the Facility Agreement to the Applicant. It is only when a default occurred in 2023 that the demand notice was raised and the Respondents disclaim knowledge of the Applicant being the lender.

6. It is also apparent from record that attempts to effect service have been positively refused by the Respondents. Even when the matter was listed on two occasions over a span of last year, the Respondents have chosen not to appear in the matter.

7. A formal invocation of arbitration was also effected on December 27, 2023, to which there has been no response from the Respondents. Since it is evident that an arbitration agreement is indeed in existence, and disputes and differences exist between the parties, it is only appropriate to allow this Application in the following terms.

A) Shruti Vyas, an advocate of this Court, 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;

Address : 19, Meher Abad,
Near Tata Garden,
Bhulabhai Desai Road,
Mumbai – 400 026.
Email id : shrutidvyas@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant 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 Arbitration and Conciliation Act, 1996 to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy

of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondents;

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; and

F) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

8. As regards Commercial Arbitration Petition No.434 of 2024, which is filed under Section 9 of the Act, Learned Counsel for the Petitioner prays for relief in terms of prayer-clauses (b) and (c), which read thus:-

“b. Directing the debit freeze of Respondents’ bank accounts linked with PAN AABPJ3592P, particularly IDBI Bank Current

Account No.100102000078506 Kalbadevi branch wherein the said loan account was disbursed.

c. That pending the hearing and final disposal of this petition and arbitration proceedings, the Hon'ble Court be pleased to order and direct the Respondents, to file their respective comprehensive affidavit disclosing on oath the assets both movable and immovable held by them jointly and or severally including details of all Bank accounts (with account number, Bank, Branch etc.) and all the amounts lying in the Bank accounts and also all debts and receivables payable by third parties to the borrower/s/Respondents with their precise and exact addresses."

9. In view of the narration set out above, the aforesaid reliefs are granted as prayed. Initially, I was of the view that the Section 9 Petition too may be disposed of treating it as the Application under Section 17 of the Act, for the arbitral tribunal to consider. However, on reflection I feel that it would be appropriate to give the Respondents one more chance to appear before this Court. In any case, the freeze of debits allowed hereby shall continue until the next date.

10. The Application under Section 11 of the Act is ***finally disposed of*** in the aforesaid terms. List the Section 9 Petition on ***February 3, 2025*** to consider the factual status obtaining on that date.

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.**]