IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 35 OF 2025

Samruddhi Industries Ltd. Through Its Authorised Signatory Mr Ramakant Narayan Malu ...Applicant

Versus

Kotak Mahindra Bank Limited ...Respondent

Mr. Rahul Totala *a/w Chaitanya Mendon, Mitesh Jain i/b Swapnil Lohiya for the Applicant.*

Mr. Nikhil Sakhardande *a/w Paras Parekh, Abhineet Sharma & Kandarp Trivedi, i/b RHP Partners, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : APRIL 15, 2025
PRONOUNCED ON : JUNE 18, 2025

JUDGEMENT:

Context and Factual Background:

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***"the Act"***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under a Master Facility Agreement dated December 18, 2018 (***"Agreement"***). The arbitration agreement is

contained in Clause 11.7 of the Agreement. Since the very existence of the arbitration agreement is in issue in these proceedings, it is necessary to reproduce the same below:-

> *This Agreement shall be construed and governed in accordance with and governed by the laws of India.* ***The Parties hereto expressly agree that all disputes arising out of and /or relating to this Agreement including any related documents shall be subject to the exclusive jurisdiction of the Courts/Tribunals of the city/town of the Branch Office or of the place which have territorial jurisdiction over the place in which the Branch is situated****. Provided this clause shall not restrict the Bank and* ***the Bank shall be entitled to initiate/take proceedings relating to a dispute in any Courts/Tribunals of any other place which has jurisdiction****. Provided further that* ***if any dispute arising under this Agreement is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, to be conducted by a sole arbitrator, appointed by the Bank****. The arbitration proceedings shall be conducted in English language. The award passed by the arbitrator shall be final and binding on the Parties. The cost of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award.* ***The venue of arbitration shall be the city in which the Branch is situated or such other place as may be determined by the Bank****. If a Party is required to*

> *enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the Party seeking to enforce the award.*
>
> ***[Emphasis Supplied]***

2. At the heart of the disputes and differences between the parties is the manner in which the Respondent has charged penal rates of interest in the loan account of the Applicant. By an invocation notice dated May 13, 2024, the Applicant has stated that it discovered that the Respondent was charging exorbitant interest at rates not contracted under the Agreement. The Respondent is said to have imposed penal interest at the rate of 36% per annum on the premise of delay in execution of security documents and additional interest of 3% per annum on the premise of non-renewal of the loan facility. There are also disputes about the bank account being blocked without reason between February 22, 2022 and February 25, 2022. In a nutshell, the disputes and differences clearly relate to the operation of the Agreement.

Respondent's Objections:

3. The Respondent has opposed the Application on the premise

that the arbitration agreement is not in existence at all in relation to the disputes being raised by the Applicant. The objections of the Respondent have been reduced to writing in an affidavit dated November 19, 2024, denying the existence of the arbitration agreement. The core contention of the Respondent is that the arbitration agreement would apply only in cases "where the monetary claim / dispute of the parties is below the pecuniary jurisdiction of the Debt Recovery Tribunal".

4. Drawing reference to paragraph 10 at Page 24 of the Application, the Respondent would contend that admittedly the dispute being raised by the Applicant are of a value of above Rs. 1 crore. The threshold of the pecuniary jurisdiction of the Debt Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993[1] ("***RDB Act***") under Section 1(4) of that Act is Rs. 20 lakh. Therefore, the Respondent would contend, the dispute between the parties is outside the scope of the arbitration agreement.

5. In other words, the contention is that since the DRT has jurisdiction to consider disputes of above Rs. 20 lakh, and the evident

[1] *The name of this legislation has changed from the name used in the arbitration agreement to this name, with effect from December 1, 2019*

value of the Applicant's claim not below Rs. 20 lakh, there is no arbitration agreement between the parties in respect of the disputes for which arbitration is sought to be invoked.

Analysis and Findings:

6. In the light of the aforesaid objection, it is necessary to examine the ingredients of Clause 11.7 of the Agreement. Under Section 11(6A) of the Act, this Court is required to confine its examination to the existence of an arbitration agreement, and nothing else.

7. At the threshold, one facet must be noted – the very Title Clause of the Agreement provides that it is contracted between the Respondent's branch set out in Schedule I to the Agreement and the Applicant. The branch set out in Schedule I is said to be "Mumbai".

8. Clause 11.7 provides that the parties have expressly agreed that "Courts / Tribunals of the city / town of the Branch Office or of the place which have territorial jurisdiction over the place in which the Branch is situated" shall have exclusive jurisdiction over "all disputes arising out of and / or relating to" the Agreement. This stipulation has an exception only for the Respondent, the aforesaid exclusive

jurisdiction clause would not restrict the Respondent from initiating proceedings in any court or tribunal of any other place which has jurisdiction.

9. It is the next proviso that is relied upon by the Respondent. That proviso stipulates further that "if any dispute arising under" the Agreement "is below the pecuniary jurisdiction limit" of the DRT, then such dispute shall be referred to arbitration in accordance with the Act, to be conducted by a sole arbitrator appointed by the Respondent.

10. In my opinion, the simplistic reference by the Respondent to the pecuniary jurisdiction threshold and comparing that with the size of the dispute for which arbitration is invoked, is misplaced. It is true that the pecuniary jurisdiction of the DRT is Rs. 20 lakh. However, when one adopts in a clause, the pecuniary (quantitative) jurisdiction of a forum, one must also examine the substantive jurisdiction of that forum.

11. The jurisdiction of the DRT is set out in Section 17(1) of the RDB Act as follows:

> *"A* ***Tribunal shall exercise****, on and from the appointed day,* ***the jurisdiction****, powers and authority* ***to entertain and decide***

> ***applications from the banks and financial institutions for recovery of debts*** *due to such banks and financial institutions."*
>
> ***[Emphasis Supplied]***

12. Even a plain reading of the aforesaid provision would show that the jurisdiction of the DRT is only to entertain applications from banks for recovery of debts. Therefore, the reference in Clause 11.7 to the pecuniary jurisdictional limit of the DRT is necessarily in relation to any application that the Respondent may want to make for recovery of debts. In my opinion, if the Respondent were to seek to recover any amounts below the threshold of Rs. 20 lakhs, such disputes would go to arbitration. If the amount sought to be recovered by the Respondent were to be above Rs. 20 lakh, there would be no scope for arbitration at all under Clause 11.7 of the Agreement.

13. On the face of it, Clause 11.7 of the Agreement contains an inherent pre-condition for the jurisdiction of an arbitral tribunal, to be attracted, namely, if the dispute is below the pecuniary jurisdiction limit of the DRT. Since the DRT can only hear applications for recovery of debt by banks and financial institutions, this pre-condition (which is the only point of objection by the Respondent) would, in my opinion, be irrelevant for purposes of adjudicating this Application, which relates to

the claim being raised by the borrower.

14. On the other hand, Clause 11.7 has to be read as a whole to see if the contracting intent between the parties was to proceed to arbitration. The heading of Clause 11.7 is "Jurisdiction and Arbitration". On the face of it, the provision points to it being an arbitration clause. However, Clause 1.2.4 of the Agreement provides that headings in the Agreement are provided solely for convenience and shall not impact the interpretation in any manner whatsoever.

15. The next ingredient of Clause 11.7 of the Agreement is to state that Courts and Tribunals having territorial jurisdiction over the place where the branch of the Respondent is situated would have jurisdiction. The branch of the Respondent is the Mumbai branch. I have given thought to whether the reference to the word "Tribunals" in this provision could be regarded as a reference to an arbitral tribunal situated in Mumbai, to see if that read with the second proviso could lead to a holistic view in favour of arbitration. However, the arbitration clause itself further stipulates that the venue of the arbitration shall be in the city in which the branch is situated – in this case, Mumbai. Therefore, since the arbitration clause contains an explicit separate

reference to the location of the seat of arbitration, the opening sentence about Courts and Tribunals in Mumbai would not have significance.

16. That leaves one with an inexorable conclusion that the arbitration agreement is explicit in its scope – it is only meant to cover disputes in the nature of recovery of debt of a size of below Rs. 20 lakh. If the recovery of debt is of a size of *above* Rs. 20 lakh, the Respondent would be able to proceed to the DRT. However, if and only if the dispute is one of recovery of debt ***and*** the size of recovery claimed is *below* Rs. 20 lakh, (i.e. below the *pecuniary jurisdiction* limit), it ***shall*** be referred to arbitration. However, for such limit to even be relevant, the dispute to begin with, must fall within the *substantive jurisdiction* of the DRT i.e. it must be a dispute involving recovery of debt by the Respondent. Since the *genus* of the dispute necessary for the arbitration agreement to exist is a dispute that would otherwise be amenable to the *substantive jurisdiction* of the DRT, the threshold of *pecuniary jurisdiction* is a secondary feature.

17. I am conscious that Clause 11.7 is extremely asymmetrical and one-sided – something that would push a Court more towards rejecting it rather than enforcing it on the premise of absence of

mutuality. For example, apart from the Respondent's recovery disputes alone being covered by arbitration, it also provides not only for unilateral appointment of an arbitrator by the Respondent but also enables a unilateral selection of venue of arbitration by the Respondent i.e. even a venue other than the city in which the branch is situated.

18. I had occasion to consider the issue of asymmetrical nuance in arbitration agreements in the case of ***Vijay Devij Aiya***[2] while adjudicating a Section 11 Application in which, I had occasion to deal with a decision of a Learned Division Bench of the Delhi High Court in ***Shri Chand***[3] which had dealt with an appeal in the Section 8 jurisdiction. In the Delhi High Court, the lender, after fighting its way through an appeal to get its right to file a written statement in a suit initiated by the borrower, filed an application under Section 8 stating that the suit is not maintainable. On an identical arbitration clause, in ***Vijay Devij Aiya***, the lender sought to proceed to arbitration while the borrower opposed the validity of the arbitration agreement, among others, in reliance upon ***Shri Chand***.

19. I state this only to underline why it is necessary to interpret

[2] *Tata Capital vs. Vijay Devij Aiya & Anr. – 2025 SCC OnLine Bom 1357*
[3] *Tata Capital Housing Finance Ltd. Vs. Shri Chand Construction and Apartment Pvt. Ltd. – 2022 (1) ARB LR 213 (Delhi) (DB)*

the actual scope of the arbitration agreement, because in such proceedings, parties are prone to taking a stance to further what would serve their interests and frustrate the counterparty's interests, depending on where they tactically and strategically stand.

20. In ***Vijay Devij Aiya***, it was held that the asymmetrical nature of the arbitration agreement would not necessarily render it void. There is scope for parties to exercise their choice on what type of dispute could go to arbitration. Under Section 7 of the Act, the parties are free to submit all or certain disputes to arbitration, leaving the rest to other avenues. In the instant case, Clause 11.7 entails an agreement whereby the cause of action of recovery of debt raised by the Respondent can go to arbitration while a cause of action against abusive computation of penal interest (as alleged by the Applicant) would go to Courts or other forums.

Conclusions and Directions:

21. To summarise:

a) It is only recovery proceedings that attract the *substantive jurisdiction* of the DRT that have relevance for consideration of the *pecuniary*

jurisdiction threshold of the DRT referred to in Clause 11.7;

b) The dispute in question for which arbitration is sought to be invoked is one of allegedly abusive application of penal interest rates in conflict with the Agreement, where the person seeking to initiate arbitration is the Applicant;

c) Such a dispute is not amenable to the jurisdiction of the DRT, and therefore, the fallback of arbitration contained in Clause 11.7 of the Agreement is not applicable to such a dispute;

d) The phrase "Courts / Tribunals" in the opening portion of Clause 11.7 does not bring within its fold Arbitral Tribunals (for which Clause 11.7 has other provisions in relation to territorial location and jurisdiction); and

e) Consequently, this Application cannot be allowed. The Applicant shall have liberty to pursue appropriate proceedings in such other forum as advised.

22. This Application raised an important arguable question of

law when interpreting the Agreement. Therefore, there shall be no order as to costs despite the Application being disallowed.

23. The time taken in pursuit of these proceedings is time spent *bona fide* on an important question arising out of the Agreement and should not count in computation of limitation in any other proceedings that the Applicant may be advised to institute.

24. With the aforesaid conclusions and directions, the Application is ***finally disposed of***.

25. 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.]