Section 31 Of The Credit Information Companies (Regulation) Act, 2005 Does Not Bar Constitution Of An Arbitral Tribunal: Madras High Court

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
SENTHILKUMAR RAMAMOORTHY; J.
Arb.O.P.(Com. Div)No.86 of 2022; 18.10.2022
Kirankumar Moolchand Jain *versus* **TransUnion CIBIL Ltd.**,

For Petitioner : Mr.Aasim Shehzad for M/s.Akhil R.Bhansali;

For Respondent : M/s.S.Parthasarathy for R1 , Mr.Varun Srinivasan, Ms.Vinithra Srinivasan for M/s.NVS & Associates for R2 Mr.C.Mohan for M/s.King and Partridge for R3

O R D E R

The second respondent herein is a lender. The said entity extended credit facilities to Dilip Chhabria Design Private Limited (the borrower). The petitioner states that he provided a personal guarantee in respect of an additional loan facility of Rs.44 crore which was offered to the above borrower. According to the petitioner, the said additional loan was not actually disbursed to the borrower. Meanwhile, the petitioner alleges that the first respondent placed on its website incorrect information provided by the second respondent in respect of the alleged default by the petitioner in respect of loan facilities extended by the second respondent to the borrower. In these circumstances, the petitioner seeks constitution of an arbitral tribunal in terms of Section 18 of the Credit Information Companies (Regulation) Act 2005 (the Act of 2005). The petitioner points out that by communication of 19.07.2021, the petitioner addressed all the three respondents herein and informed them that unless necessary correction is made in respect of the incorrect information, an arbitral tribunal should be constituted in terms of Section 18 of the Act of 2005. The present petition is filed in these facts and circumstances.

2. The petition is opposed by the respondents herein on multiple grounds. In order to underscore that such objections may be entertained in a petition under Section 11 of the Arbitration and Conciliation Act,1996(the Arbitration Act), learned counsel for the second respondent relied on *Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1* and *Indian Oil Corporation Limited v. NCC Limited* *2022 LiveLaw (SC) 616*. The first ground on which the petition is opposed by the second respondent is the bar under Section 31 of the Act of 2005. Under Section 31, the jurisdiction of courts or authorities is barred in relation to matters referred to in Sections 4, 5, 6, 7 and 18 of the Act of 2005. Since this is a matter referred to in Section 18, it is contended that the jurisdiction of this Court is barred. 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. A weak second objection was raised by learned counsel for the third respondent on the ground that there is no arbitration agreement. This objection is liable to be rejected because Section 18 of the Act of 2005 imports an agreement for purposes of the Arbitration Act by way of a legal fiction.

3. This leads to the third objection raised by the respondents herein. The third objection is that Section 18 does not provide for the resolution of the present dispute through the mechanism of arbitration because it does not relate to the business of credit information. Learned counsel for the petitioner relied upon the judgments in *Sunil Agarwal v. LIC Housing Finance Ltd,* 2011 *SCC OnLine Cal 5473; P.V.R.S.Mani Kumar v.*

Transunion of CIBIL Ltd, O.A.No.360 of 2015, order of this Court dated 27th August 2019; and *Trans Union CIBIL Ltd. v. P.C.Baskar, 2020 SCC OnLine Mad 18732,* to contend that the matter may be referred to arbitration under Section 18. On the contrary, learned counsel for the third respondent referred to the judgment of the Andhra Pradesh High Court in *Srikanth Vairagare v. M/s.ICICI Bank Limited, 2018 SCC OnLine Hyd 274,* particularly paragraphs 8 to 10 thereof; and the judgment of the Bombay High Court in *DSL Enterprises Private Limited v. The Chief General Manager, DBOD, Reserve Bank of India, 2010 SCC OnLine Bom 2207* to contend that the scheme of Section 18 does not extend to a dispute of this nature. He also pointed out that a review application is pending in respect of the judgment of the Calcutta High Court and an appeal is pending against the order passed in O.A.No.360 of 2008, which were relied upon by learned counsel for the petitioner. Both learned counsel for the second and third respondents contend that arbitration is provided for under Section 18 only if the dispute relates to the business of credit information. In order to decide whether this objection is valid, it is necessary to set out under Section 18(1), which reads as under:

*"**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."

4. On examining the text of Section 18, it is clear that it applies if the following cumulative conditions are satisfied:

(i) a dispute arises amongst credit information companies, credit institutions, borrowers and clients;
(ii) the dispute relates to the business of credit information; and
(iii) no remedy is prescribed under the Act of 2005.

The first respondent herein is admittedly a credit information company. The second respondent is admittedly a credit institution. The expression 'client' is defined in Section 2(c) of the Act of 2005 as including a guarantor or a person who proposes to give a guarantee for a borrower of a credit institution. By virtue of this definition, the petitioner qualifies as a client. Therefore, this is clearly a dispute between a client, on the one hand, and the credit information company and credit institution, on the other. The next question that arises for consideration is whether the dispute pertains to the business of credit information. Section 14 of the Act of 2005 deals with the functions of a credit information company and the forms of business of such entity are enumerated therein. The said Section is set out below:

*"**14. Functions of a credit information company:-**--(1) A credit information company may engage in any one or more of the following forms of business, namely:-*

(a) to collect, process and collate information on trade, credit and financial standing of the borrowers of the credit institution which is a member of the credit information company;

(b) to provide credit information to its specified users or to the specified users of any other credit information company or to other credit information company being its member;

(c) to provide credit scoring to its specified users or specified users of any other credit information company or to other credit information companies being its members:

(d) to undertake research project;

(e) to undertake any other form of business which the Reserve Bank may, specify by regulations as a form of business in which it is lawful for a credit information company to engage.
(2) No credit information company shall engage in any form of business other than those referred to in sub-section (1).

5. From the above definition, it is evident that a credit information company is entitled to engage *inter alia* in the business of collection, processing and collation of credit information, the provision of such information to its users and the provision of credit scores. Under Section 19 of the Act of 2005, both the credit information company and the credit institution are required to ensure that the data relating to the credit information maintained by them is accurate and complete. Section 19 reads as under:

*"**19.Accuracy and security of credit information:-**- A credit information company or credit institution or specified user, as the case may be, in possession or control of credit information, shall take such steps (including security safeguards) as may be prescribed, to ensure that the data relating to the credit information maintained by them is accurate, complete, duly protected against any loss or unauthorised access or use or unauthorised disclosure thereof."*

6. When Sections 14 and 19 are read together, it appears that a dispute between a borrower or client, on the one hand, and the credit information company and credit institution, on the other, in relation to the accuracy or completeness of the credit information collected, processed or collated by them would qualify as a dispute relating to the business of credit information. Consequently, such dispute may be referred for arbitration provided no remedy is prescribed in respect thereof by the Act of 2005. Apart from indicating that such disputes may be referred under the applicable ombudsman scheme, learned counsel for the respondents are unable to point out any other remedy that is available to a borrower or client in such circumstances.

7. For the reasons set out above, I conclude that the present dispute pertains to the business of credit information and, in the absence of any other remedy, resort to arbitration is permissible under Section 18 of the Act of 2005. Hence, I do not subscribe to the views expressed in the judgments relied on by the respondents in support of this objection.

8. The first respondent raised the objection that the petitioner did not invoke the arbitration clause after the order in O.A.No.485 of 2021. Under Section 18, the RBI is required to appoint the arbitrator or direct parties to constitute the arbitral tribunal as per the Arbitration Act. In this case, by reply dated 01.09.2021, the RBI did not appoint the arbitrator and instead directed the petitioner to approach the Additional Secretary, Department of Agriculture, Cooperation and Farmers Welfare. Therefore, this objection is untenable. The first respondent also contended that the credit information company can correct credit information only upon certification by the credit institution. This could be raised as a defence in arbitration but is not a valid reason to resist the Section 11 petition.

9. Another significant objection of the respondents remains to be considered. The second respondent adverted to the institution of proceedings against the petitioner as personal guarantor before the National Company Law Tribunal at Bombay (the NCLT). Upon initiation of such proceeding, he contended that an interim moratorium is triggered under Sections 95 and 96 of the Insolvency and Bankruptcy Code 2016 (the IBC). Such interim moratorium continues until the petition is admitted and, if admitted, a moratorium would operate thereafter. In contrast to Section 14, by relying on *State Bank of India v. V.Ramakrishnan, (2019) 1 CTC 889,* he contended that the interim moratorium

commences on the date of lodging of the application under Section 95. According to learned counsel, such interim moratorium would apply in respect of any legal action or proceeding pending in relation to any debt or to the initiation of any legal action or proceeding in respect of any debt. By referring to a writ petition filed in the Bombay High Court by the petitioner, he contended that the NCLT proceedings were not interfered with. He also referred to a resolution plan submitted by the petitioner before the NCLT and alleged suppression of material facts. By relying on *Sukanya Holdings Private Limited v. Jayesh H.Pandya, (2003)5 SCC 531,* learned counsel raised the last related contention that the dispute pending before the NCLT and the dispute proposed to be raised before the arbitral tribunal cannot be bifurcated.

10. In order to test the validity of the contention on the interim moratorium, it is necessary to extract Section 96(1) of the IBC. The said provision is as under:

96. (1) When an application is filed under section 94 or section 95 —
(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
(b) during the interim-moratorium period—
(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt."

11. On reading the above provision, it is evident that the interim moratorium applies to any pending legal action or proceeding in respect of any debt and to the initiation of any legal action or proceeding by the creditors of the debtor in respect of any debt. The expression used in Section 96(1) (b) is "in respect of any debt" and not for recovery of a debt. Although on a purely textual reading, the embargo on fresh proceedings will apply only to creditors of the debtor and not to a guarantor, when interpreted in context, the interim moratorium applies not only to proceedings for recovery of a debt but to proceedings in which the liability of the borrower and guarantor are determined in relation to the credit facility. Turning to the facts of this case, the petitioner seeks the constitution of an arbitral tribunal to adjudicate the dispute pertaining to information put out by the first and second respondents in respect to the alleged default by the borrower and the petitioner. Whether the information provided by the first and second respondents, as the credit information company and credit institution, respectively, is correct or incorrect, in turn, depends on the scope of the personal guarantee provided by the petitioner in relation to credit facilities availed of by the borrower and, consequently, on the liability arising thereunder. Hence, an arbitral tribunal cannot decide whether the information is accurate or inaccurate without examining the scope of the personal guarantee(s) and the liabilities arising thereunder, and the NCLT is seized of the said dispute. Thus, the constitution of an arbitral tribunal, at this juncture, would be premature. After the moratorium ends, in case the petitioner were to succeed in the defence before the NCLT and the NCLT concludes that the petitioner did not guarantee the relevant debts, it would be open to the petitioner to initiate proceedings for the constitution of an arbitral tribunal to adjudicate the dispute relating to the credit information provided by the first and second respondents in terms of Section 18 of the Act of 2005.

12. Arb.O.P.(Comm. Div.)No.86 of 2022 is disposed of on the above terms without any order as to costs.