

# Aditya Birla Finance Limited vs Presidium Educational And Charitable ... on 11 October, 2021

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 706/2021, I.As. 9445/2021 & 10311-312/2021

ADITYA BIRLA FINANCE LIMITED

Through: Mr. Sachin Datta, Senior  
with Mr. Saket Sikri, M  
Singh and Ms. Ria Kohli

versus

PRESIDIUM EDUCATIONAL AND CHARITABLE TRUST &  
ORS.

..... Resp

Through: Mr. Darpan Wadhwa,  
Advocate with Mr. Jai Mohan, Mr.  
Rohit Kumar, Ms. Cauveri Birbal a  
Ms. Neelakshi Bhauduria, Advocate  
for R-1 to 4 & 6 to 9.  
Mr. Ashish Dholakia,  
Advocate with Ms. Kusum Ansari,  
Advocate for R-10 to 12, 14 & 15.  
Mr. Vinay Kumar Gargm Senior  
Advocate with Mr. P.S. Singhal, M  
Sunil Kumar, Mr. Parv Garg, Mr.  
Pawas Kulshrestha, Mr. Karandeep  
Singh and Ms. Rekhi, Advocates fo  
Proposed R-13 & 16.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 11.10.2021

1. The present petition under Section 11 (5) of the Arbitration and Conciliation Act, 1996 [hereinafter, 'the Act'] seeks appointment of a Sole Arbitrator for adjudication of disputes between the parties in respect of five different facilities advanced by the Petitioners vide Facility Agreements all dated 10th February, 2018 and other finance documents/ security documents [hereinafter, 'Financing Documents']<sup>1</sup>.

2. The Arbitration Agreement is contained in a separate agreement being

- 'Agreement for Arbitration' dated 28th August, 2018 [hereinafter, 'the Agreement'] which forms part of the Financing Documents in relation to the subject matter in all the Financing Documents.<sup>2</sup> The facilities are defined in Annexure A to the Agreement<sup>3</sup> and are follows: -

ANNEXURE-A COMPANY FACILITY Presidium Educational Institution Term Loan 1 - Rs 6.35 crore (100%) Private Limited Term Loan 2 - Rs 25 crore (51%) Mother Pride Education Term Loan 1 - Rs 4.56 crore (100%) Personna Private Limited Term Loan 3 - Rs 15 crore (50%) Scholartube Education and Term Loan - Rs 14.70 crore (100%) Learning Solutions Private Limited Mothers Pride Education Term Loan - Rs 8.5 crore (50%) Institution Private Limited Presidium Educational and Term Loan 1 - Rs 14.10 crore (100%) Charitable Trust Term Loan 2 - Rs 11.79 crore (40%)

3. The relevant portion of the Agreement reads as under: -

"1. Any disputes, difference/s and/or claim/s arising out of or in connection with the Facilities or any of the Financing Documents or as to the construction, meaning, or effect thereof or as to the rights and liabilities of the Parties thereunder shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof which shall be referred to a sole arbitrator.

2. The arbitration shall be hold, at a place as determined by the Lender. The arbitration proceedings shall be conducted in English. In the event of Defined in para (a.) of the recitals to the 'Agreement for Arbitration' dated 28th August, 2018.

Clause 3 given at page 13 of the 'Agreement for Arbitration' dated 28th August, 2018.

Annexure-A at page 14 of the 'Agreement for Arbitration' dated 28th August, 2018.

death, refusal, neglect, inability, or incapability of the person so appointed to act as an arbitrator, the Party who had originally appointed the arbitrator(s) shall appoint new arbitrator(s) in place of the said arbitrator(s). The award of the arbitrator(s) shall be final and binding on all Parties concerned.

Notwithstanding anything contained hereinabove, in the event the legal status of the Lender changes or in the event of the law being made or amended so as to bring the Lender under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act ("Securitization Act") and/or The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to enable the Lender to enforce the security under the Securitization Act and/or proceed to recover dues from the Borrower under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of such Lender, cease to have any effect and if arbitration proceedings are commenced but no Award is made, then at the option of such Lender such proceedings shall stand terminated and the mandate of the Arbitrator shall come to an end from the date of the making of the law

or the date when amendment becomes effective or the date when such Lender exercises the option of terminating the mandate of Arbitrator, as the case may be. Provided that neither a change in the legal status of a Lender nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.

3. This Agreement constitutes part of the Financing Documents with respect to the subject matter contained in all the Financing Documents, notwithstanding anything to the contrary contained in any of the Financing Documents."

4. On the basis of the aforementioned Agreement, the Petitioner seeks reference to arbitration qua Respondents No. 1 to 15. Amongst these Respondents, the signatories to the Agreement are only Respondents No. 1 to 9. Mr. Sachin Datta, Senior Counsel for the Petitioner, on instructions, states that he has no objection in case the Court confines the reference only to Respondents No. 1 to 9, without prejudice to his rights and contentions and remedies available in accordance with law, qua Respondents No. 10 to 15 and also with respect of entity for which an impleadment has been sought i.e. - Respondent No. 16 (Mr. Gurmeet Singh Matharoo).

5. Mr. Darpan Wadhwa, Senior Counsel for the Respondents No. 1 to 9 refers to Clause 2 of the Agreement, reproduced above and submits that in view of the fact that the Petitioner has taken recourse and initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter, 'SARFAESI'], Petitioner cannot now seek reference to arbitration.

6. Mr. Wadhwa further submits that the Agreement is in relation to five independent Loan Agreements/ Facility Agreements between Respondents No. 1 to 9, referred above and therefore, there must be independent references, although the Court may appoint a common Sole Arbitrator.

7. Having considered the contentions of the parties, in the opinion of the Court, the objection raised by Mr. Wadhwa regarding the non-arbitrability of disputes by placing reliance on Clause 2 of the Agreement, noted above is a subject matter of interpretation of the said clause. Further, it is no longer in dispute that a right of a lender to take recourse to proceedings under securitization is independent of the rights under the Act.

8. In view of the above, the Court sees no hesitation in allowing the present petition and accordingly, Hon'ble Mr. Justice Madan B. Lokur, (Retd.) former Judge of the Supreme Court of India [Contact No.: +91 9868219007] is appointed as the common Sole Arbitrator to adjudicate the disputes between the Petitioner and Respondents No. 1 to 9 arising out of and in relation to the Agreement dated 28th August, 2018 read along with transaction documents/ Facility Agreements all dated 10th February, 2018 and other finance documents/ security documents.

9. The parties are directed to appear before the learned Sole Arbitrator as and when notified. This is subject to the learned Arbitrator making the necessary disclosure under Section 12(1) of the Act and

not being ineligible under Section 12(5) of the Act.

10. The learned Arbitrator will be entitled to charge his fee in terms of the provisions of the Fourth Schedule appended to the Act.

11. It is clarified that the Court has only referred the Petitioner and Respondents No. 1 to 9, who are signatories to the Agreement. The reference to arbitration has not been made qua Respondents No. 10 to 15 and Mr. Gurmeet Singh Matharoo. It is further clarified that the Court has not examined any of the claims of the parties and all rights and contentions on merits are left open. Both the parties shall be free to raise their claims/ counter claims before the learned Arbitrator in accordance with law.

12. Accordingly, the petition is allowed in the above terms and the pending applications are also disposed of.

SANJEEV NARULA, J OCTOBER 11, 2021/nk