

महाराष्ट्र MAHARASHTRA

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CG 616705

BEFORE THE SOLE ARBITRATOR
ATUL DAGA
ADVOCATE, BOMBAY HIGH COURT

प्रधान मुद्रांक कार्यालय, मंडई
प.मु.वि.क. ८००००२०

27 FEB 2024

In the matter of arbitration between :

सक्षम अधिकारी

IIFL Finance Limited,
(previously known as India Infoline Finance Limited)
a non-banking financial company,
incorporated under the Companies Act 1956 and
now subsisting under the Companies Act 2013 and
having its registered office address at :
IIFL House, Sun Infotech Park, Road No16V,
Plot No. b-23, Thane Industrial Area, Wagle Estate, Thane
and also at :
802, 8th Floor, Hubtown Solaris, N.S. Phadke Marg,
Vijay Nagar, Andheri (East), Mumbai - 400 069

श्रीमती सुषमा चव्हाण

...Claimant

versus

Harshad Hiraji Thakkar,
an adult individual having his last known residential
address at :
A/2603-04, E-6, Sarvodaya Heights, Jain
Mandir Road, Sarvodaya Nagar,
Mulund (West), Mumbai-400 080
and having his last know office address at :
Ashrapura Intimates Fashion Limited,
4th floor, Pacific Plaza, Plot No.570, Bhavani Shankar Road,
Off. Matkar Marg, Dadar (West), Mumbai - 400 028

...Respondent

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जोड़पत्र - २ Annexure - II 243

AV:IRD

सुरांकि लिडी बॉर्ड की अनु. क्रमांक / विवरण	
पंजीकृत नाम	
पता	Atul Daga
संस्था का नाम	
संस्था का पता	
संस्था का फोन नंबर	
संस्था का ईमेल पता	
संस्था का वेबसाइट	
संस्था का बैंक खाता नंबर	
संस्था का बैंक का नाम	
संस्था का बैंक का पता	
संस्था का बैंक का फोन नंबर	
संस्था का बैंक का ईमेल पता	
संस्था का बैंक का वेबसाइट	

7 MAR 2024

7 MAR 2024

प्रतिभा जाधव

me/

AWARD

(Dated this 1st day of April 2024)

Facts :

1. The present arbitration proceedings have been initiated at the instance of the abovenamed Claimant. The Claimant claims itself to be an entity registered as a non-banking finance company and incorporated under the provisions of the Companies Act, 1956. It carries on business of providing non-banking financial services and claims to be part of the 'IIFL Group', which group is engaged in providing diverse services in the field of finance, wealth and asset management, advisory and broking services, mutual funds and other financial products and distribution thereof, etc.;
2. As per the case pleaded by the Claimant, the Respondent is an individual with his last known address as mentioned in the cause title hereinabove and having the last known office address at Ashapura Intimates Fashion Limited, 4th Floor, Pacific Plaza, Plot No. 570, Bhavani Shankar Road, Dadar (West), Mumbai - 400 028. The Respondent is the Promoter & Managing Director of the said Ashapura Intimates Fashion Limited;
3. It is the case of the Claimant that sometime around December 2017, the said Respondent had approached one of the group companies of the Claimant, namely 'IIFL Securities Limited', for opening a trading and demat account with them. The said entity 'IIFL Securities Limited' had duly opened a trading and demat account for the Respondent. As the Respondent was desirous of obtaining credit facility for the purposes of making investments, the said Respondent had approached the Claimant for seeking finance and had represented to the Claimant that it had the financial and organizational capacity to service its debts. Relying entirely on the representation and assurances made by the Respondent, the Claimant agreed to extend credit facility to the Respondent;
4. Accordingly, the parties entered into a document/agreement styled as 'Master Credit Facility Agreement' dated 15.09.2018 to record the terms and conditions based on which the credit facility was to be extended to the

Respondent by the Claimant. Pursuant to the execution of the above Master Credit Facility Agreement, the Respondent approached the Claimant seeking grant of the credit facility of Rs.10,00,00,000/- (Rupees ten crores only) for the purposes of investment. The Claimant accepted the request of the Respondent and issued a 'sanction letter' also dated 15.09.2018 granting the credit facility of Rs.10,00,00,000/- (Rupees ten crores only) in favour of the Respondent. As per the terms of the said Agreement read with the 'sanction letter', the rate of interest applicable to the credit facility was fixed at 13% per annum, which was to accrue daily on the principal amount;

5. In order to secure the above facility extended by the Claimant to the Respondent, the Respondent also executed a document/agreement styled as 'Master Pledge Agreement', also dated 15.09.2018, in favour of the Claimant. Under the said agreement, the Respondent pledged 10,61,000 equity shares of the entity – 'Ashapura Intimates Fashion Limited'. The Respondent also executed a Power of Attorney, also dated 15.09.2018, in favour of the Claimant in consideration of the facility extended by the Claimant to the Respondent as recorded in the 'Master Credit Facility Agreement' read with the 'sanction letter' and the 'Master Pledge Agreement'. In furtherance of the above agreements and the facility provided by the Claimant, the Respondent also provided his net-worth certificates issued by 'Bagaria & Company' alongwith copies of his Income Tax Returns for the Assessment Years (i) 2016-17, (ii) 2017-18 and (iii) 2018-19 alongwith other relevant documents. As per the said certification, the Respondent's networth as on 31.03.2018 was shown as Rs.4,50,58,79,160/- (Rupees four hundred and fifty crores fifty-eight lakhs seventy-nine thousand one hundred and sixty only). At the time of execution of the above documents in September 2018, the Respondent was the Promoter and Managing Director of the entity - Ashapura Intimates Fashion Limited. The said entity, I am informed, is currently under liquidation and moratorium has been declared with respect to the said entity;
6. On 01.10.2018, an amount of Rs.10,00,00,000/- (Rupees ten crores only) was disbursed to the Respondent by the Claimant under the above facility;
7. Sometime immediately thereafter, the market value of the security pledged by the Respondent under the Pledge Agreement i.e. 10,61,000 equity shares of

Ashapura Intimates Fashion Limited, started decreasing drastically. The manner in which the market value of the shares of Ashapura Intimates Fashion Limited changed and fall in the value of the said 10,61,000 shares pledged by the Respondent has been mentioned as below :

S. No.	Date	Closing Market Price Per Share	Value of 10,61,000 Pledged Shares
1.	01.10.2018	273.20	28,98,65,200
2.	03.10.2018	245.90	26,08,99,900
3.	04.10.2018	221.35	23,48,52,350
4.	05.10.2018	199.25	21,14,04,250
5.	08.10.2018	189.30	20,08,47,300

8. According to the Claimant, the above movement in the market value of the shares of Ashapura Intimates Fashion Limited is also reflected on the Bombay Stock Exchange's website;
9. On 01.10.2018, at the time of creation of pledge, the market value of the total shares pledged by the Respondent with the Claimant was Rs.28,98,65,200/-. By the close of market trading hours on 08.10.2018, the cumulative market value of the shares pledged by the Respondent with the Claimant had fallen to Rs.20,08,47,300/-;
10. According to the case pleaded by the Claimant, the above drastic fall in the value of the pledged shares was also due to the reason that there were reports in several newspapers that the Respondent was absconding since 02.10.2018, and that the Respondent owed significant amounts of money to various parties other than the Claimant. The disappearance of the Respondent coupled with reports about his financial conditions caused a drastic reduction in the market value of the shares pledged by the Respondent in favour of the Claimant as mentioned above;
11. As soon as the Claimant became aware of the aforesaid developments, and especially looking to the significant reduction in the value of shares pledged by the Respondent to secure the credit facility extended to him by the Claimant, the Claimant decided to exercise its right under the Credit Facility

Agreement to cancel/recall the facility. To this effect, the Claimant addressed a letter dated 09.10.2018, under the cover of its e-mail dated 10.10.2018, to the Respondent calling upon him to repay a sum aggregating to Rs.10,03,56,164.38/- (Rupees ten crores three lakhs fifty-six thousand one hundred and sixty-four and paise thirty-eight only) which was an aggregation of the principal sum of Rs.10,00,00,000/- (Rupees ten crores only) and interest thereon due as on 09.10.2018 being Rs.3,56,164.38/- (Rupees three lakhs fifty-six thousand one hundred and sixty-four and paise thirty-eight only) on or before 10.10.2018. The Respondent failed to respond to the above recall letter and further failed to make repayment to the Claimant thereby committing a default of his obligations and violating the terms and conditions of the Master Credit Facility Agreement and other related documents mentioned above. It has been pleaded by the Claimant that it made multiple attempts to reach out to the Respondent by addressing various e-mails and even made attempts to contact him on his registered mobile number. However, all attempts on the part of the Claimant to urge the Respondent to pay and clear the outstanding dues under the credit facility did not result in any success and the Respondent failed and neglected to comply with his obligations and/or correct the breaches and violations committed by him;

12. As the Respondent failed to respond to any communication addressed to him by the Claimant and/ or pay and clear the outstanding dues, the Claimant was constrained to address a demand notice to him through its advocates on 10.12.2018. Under the said Demand Notice, the Claimant called upon the Respondent to make payment in respect of the sum of Rs.10,22,91,249.40/- (Rupees ten crores twenty-two lakhs ninety-one thousand two hundred and forty-nine and paise forty only) due and payable by the Respondent to the Claimant under the Credit Facility Agreement and the sanction letter, as was outstanding on 01.12.2018, within 7 days of receipt of the demand notice. As the letter dated 10.12.2018 was returned with the remark "Intimation" on two occasions, the Claimant's advocates forwarded the said notice to the alternate address of the Respondent on 17.12.2018;

13. The Respondent, till date, has not responded to the demand notice or made payment of the outstanding sums owed by him to the Claimant. It is the case of the Claimant that despite several reminders and follow-ups, the Respondent has failed to clear the dues, which are payable by the Respondent to the Claimant;
14. According to the Claimant, the above facts clearly demonstrate that the Respondent has failed and neglected to make payment of the outstanding amount, despite repeated reminders from the Claimant. The Respondent, according to the Claimant, has chosen to use dilatory tactics by not responding to any of the communications addressed by the Claimant. On account of continued failures of the Respondent to meet his obligations and the significant deterioration in the value of the securities provided by him, it has been pleaded by the Claimant that it was left with no other option but to recall the credit facility extended;
15. Owing to the non-payment of outstanding dues by the Respondent, certain other securities of the Respondent, such as mutual funds lying with the Claimant, have been sold by the Claimant and a sum of Rs.4,39,68,485.23/- (Rupees four crores thirty-nine lakhs sixty-eight thousand four hundred and eighty-five and paise 23 only) have been recovered and duly credited in the ledger accounts of the Respondent held with the Claimant;
16. As the Respondent continued to be in default of its obligations under the above mentioned agreements, the Claimant invoked arbitration *vide* notice dated 01.04.2019 in terms of Article 16.2 of the Master Credit Facility Agreement, which provided for arbitration as the mode of resolution of disputes between the parties. The said notice was returned with the remark "Intimation" on two occasions and finally returned as "Unclaimed";
17. According to the Claimant, as on 31.08.2019 an aggregate sum of Rs.6,71,45,435.51/- was due and payable by the Respondent to the Claimant alongwith further penal interest at the rate of 13% per annum on the overdue amounts, aggregating to a total interest of Rs.30,647/- as per the Particulars of Claim annexed to the Statement of Claim. The Claimant has also claimed

further interest on the outstanding amount at the rate of 18% per annum from 01.09.2019 till payment and/or realization thereof;

18. In the absence of any reply whatsoever from the Respondent, the Claimant through its advocates addressed a letter dated 11.06.2019 by 'hand delivery' to the erstwhile Sole Arbitrator (Mr. Farhan Dubash) requesting him to accord his consent to act as the Sole Arbitrator to adjudicate the disputes with the Respondent arising out of the Master Credit Facility Agreement. The said letter was also copied to the Respondent. However, the said copy marked to the Respondent was returned as undelivered;
19. As per the original records of the present arbitration proceedings transmitted to me by the erstwhile Sole Arbitrator, the said letter dated 11.06.2019 was duly replied to *vide* letter of 20.06.2019, wherein the erstwhile Sole Arbitrator accorded his consent to act as the sole arbitrator to adjudicate the disputes and difference between the Claimant and Respondent and scheduled a preliminary meeting on 09.07.2019;
20. As per the original records, a preliminary meeting was held in the matter on 09.07.2019, wherein once again the Respondent remained absent and did not make an appearance. The Claimant was directed to serve the Minutes of the Meeting on the Respondent and file an affidavit of service to that effect. As per the original records, the Claimant complied with the same and during the course of the second meeting held on 07.08.2019, the Claimant filed Affidavit of one Mr. Nilesh Chavan and placed on record that it was unable to serve the Respondent. The Claimant sought a further opportunity to serve the Respondent with the Minutes of Meeting of both i.e. the first meeting held on 09.07.2019 and second meeting held on 07.08.2019 respectively. From the original record, it appears that a further opportunity was granted to the Claimant to serve the Respondent as prayed;
21. At the third hearing held on 23.08.2019, the Claimant filed another affidavit of Mr. Nilesh Chavan informing, *inter alia*, that the service had been attempted by several modes, including by registered post, hand delivery, e-mail and pasting (which was attempted but could not be completed due to

interference by the security guards at the last known residential address of the Respondent);

22. Therefore, in the meeting held on 23.08.2019, (at which, once again the Respondent remained absent), the Claimant was directed to serve the proceedings on the Respondent, by way of substituted service, by publication of the notice of the proceedings in (a) an English newspaper and (b) a Gujarati newspaper having wide circulation in the Respondent's last known address;
23. Accordingly, the Claimant published the two notices on 12.09.2019, one in the Free Press Journal (English, Mumbai Edition) and one in Sandesh Newspaper (Gujarati, Mumbai Edition). Affidavit of service in this regard has been filed placing this compliance on record by the Claimant;
24. From the record, it becomes clear that several attempts were made to serve the Respondent and thereafter public notices were issued in the newspapers. Having observed that the notice of the proceedings were duly effected on the Respondent through substitute service, which notice had expressly called upon the Respondent to remain present for the hearing to be held on 19.09.2019 (as record in the Minutes dated 19.09.2019) and inspite of the same, since the Respondent had chosen to remain absent, the erstwhile Sole Arbitrator thereafter directed the proceedings to continue ex-parte as against the Respondent;
25. In the next meeting held on 08.11.2019, the Statement of Claim filed by the Claimant was taken on record and the Respondent was directed to file his Statement of Defence. From the original record, it clear emerges that the Respondent was put to strict notice that failure to file the Statement of Defence would necessarily result in an order under Section 25(b) of the Arbitration & Conciliation Act 1996 being passed to the effect that the Respondent's right to file statement of defence will stand forfeited and proceedings will thereafter proceed ex-parte in his absence;
26. In the next meeting held on 06.12.2019, the Respondent did not appear despite repeated efforts from the Claimant's side. In the Minutes of the

Meeting held on 06.12.2019, it has been observed and recorded that the Claimant's advocate had served the Respondent through substitute service by giving public notice in two newspapers. An affidavit of service dated 05.12.2019 of one Mr. Nilesh Chavan was filed on behalf of the Claimant by its advocates on 06.12.2019 and the same was taken on record. In the said meeting / hearing held on 06.12.2019, the erstwhile Sole Arbitrator directed the Claimant to file its affidavits in lieu of examination-in-chief of all its witnesses simultaneously together with the compilation of documents and serve a copy thereof on the Respondent. The matter was adjourned for marking of the Claimant's documents and cross-examination of the Claimant's witness(es) as more particularly recorded and mentioned in the Minutes of Meeting held on 06.12.2019;

27. In the next meeting held on 13.02.2020, the evidence affidavit of the Claimant's witness - Mr. Sandip Vare (CW-1) alongwith the compilation of documents (15 documents) were taken on record;
28. Alongwith evidence affidavit and the above compliation, the Claimant also filed a certificate under Section 65B of the Indian Evidence Act dated 13.02.2020 in respect of the documents at Serial Nos.7, part of the document at Serial No.9 being an e-mail dated 10.10.2018 (12:41 PM) addressed by the Claimant to the Respondent and part of the document at Serial No.10 being the trailing e-mail dated 10.10.2018 (10:12 PM);
29. In the Minutes of the Meeting held on 13.02.2020, the erstwhile Sole Arbitrator has recorded as under :

"3. Since the beginning of these proceedings, none has appeared on behalf of the respondent, who is stated to be absconding. Despite every attempt to serve him, the Claimant has been unsuccessful. As my previous minutes record, the Respondent has not been found at his address. When personal hand delivery/ service was sought to be done, I was informed that the relatives of the Respondent refused to accept the same. When the notice was attempted to be pasted on the door, the Society refused to permit the same. Ultimately, the Claimant has even done substituted service on the Respondent by publishing the same in

the Free Press Journal newspaper and local gujarati 'Sandesh' newspaper on 12th September 2019. However, despite all these efforts, the Respondent has remained untraceable. In the premises, in the Minutes of the 4th Arbitral Hearing, I was constrained to pass an order directing that the proceedings shall henceforth proceed 'ex-parte' against the Respondent. Despite such order, out of abundant caution, I had directed the Claimant's Advocate to once again attempt to serve a copy of the evidence and documents on the Respondent. The Claimant's Advocate has filed the Affidavit of Service dated 12th February 2020 in that regard.

4. At today's hearing, the Claimant's witness Mr. Sandip Vare (CW-1) is present. The said Evidence Affidavit dated 6th February, 2020 is taken on record and treated as the evidence of the Claimant in these proceedings. On the basis of the averments made therein, the 15 documents tendered by the Claimant are also taken on record and marked, Exhibits C-1 to C-15 respectively.

5. Since none is present for the Respondent and since I have already passed an order on 19th September 2019 stating that due to the continuous default on the part of the Respondent in remaining present for the hearings, the matter should proceed ex-parte, the cross-examination of the Claimant's witness is now closed since the Respondent has forfeited his right in this regard.

6. The Claimant's advocate states that the Claimant does not propose to lead any further evidence and accordingly closes the evidence of the Claimant. Since the Respondent has not filed the Statement of Defence, there is no question of directing him to file any evidence in the matter.

7. Therefore, the matter will now proceed for final arguments.

..."

30. I have been informed and it also emerges from the proceedings filed before the Hon'ble Bombay High Court being Commercial Arbitration Application

No.19 of 2022 that on 20.08.2020, the Claimant's advocate sought dates to be fixed for the final hearing in the said arbitration proceedings and erstwhile Sole Arbitrator *vide* his e-mail dated 20.08.2020 placed the matter on 21.09.2020 and 23.09.2020;

31. I have been informed and it also emerges from the proceedings filed before the Hon'ble Bombay High Court being Commercial Arbitration Application No.19 of 2022 that during the arbitral hearing on 21.09.2020, the erstwhile Sole Arbitrator requested the Claimant's advocate to consider the law laid down in the judgment of '*Perkins Eastman Architects DPC and Another vs. HSCC (India) Limited*' reported in (2019) SCC Online SC 1517 in relation to the unilateral appointment of the arbitrator by the Claimant. The hearing was adjourned to 08.10.2020;
32. I have been informed and it also emerges from the proceedings filed before the Hon'ble Bombay High Court being Commercial Arbitration Application No.19 of 2022 that in view of the law laid down in the matter of '*Perkins Eastman Architects DPC*' (supra), the erstwhile Sole Arbitrator inter alia recorded that he is ineligible to continue to act as the arbitrator in the matter and the Claimant was accordingly directed to approach the Hon'ble High Court to obtain suitable directions/ orders;
33. On the application of the Claimant being Commercial Arbitration Application No.19 of 2022, the Hon'ble High Court was pleased to pass Order dated 12.06.2023 (Dangre J.) appointing the undersigned as the substitute sole arbitrator to decide the disputes and differences between the parties in view of the *de jure* ineligibility of the erstwhile Sole Arbitrator to continue to act in view of the law laid down in the matter of '*Perkins Eastman Architects DPC*' (supra);
34. In view of the above Order dated 12.06.2023, a preliminary meeting in the matter was held on 22.07.2023 at 10:30 am and directions/ orders were passed as recorded in the Minutes of the Meeting. The matter was adjourned to (i) 29.09.2023 – 5 pm onwards; and (ii) 09.10.2023 – 5 pm onwards for the purposes of final hearing in the matter. The Claimant was directed to duly inform the Respondent on or before 15.08.2023 about the passing of the

above order dated 12.06.2023 including appointment of the present Tribunal and next dates on which the matter was kept for hearing the final arguments;

35. The relevant part of the said Minutes read as under :

“ ...

4. *I have perused copies of the Minutes / Orders/ Direction in respect of the meeting/ hearing held on (i) 9th July 2019, (ii) 7th August 2019, (iii) 23rd August 2019, (iv) 19th September 2019, (v) 8th November 2019, (vi) 6th December 2019, (vii) 13th February 2020, (viii) 21st September 2020 and (ix) 8th October 2020 which have been placed on record before me today;*

5. *In light of the above, the following directions / orders are passed :*

5.1 *the Claimant to file the entire original record of the arbitration proceedings with the Tribunal on or before 1st August 2023;*

5.2 *the matter is now kept on :*

5.2.1 *29th September 2023 – 5 pm onwards; and*

5.2.2 *9th October 2023 – 5 p.m. onwards*

for the purposes of final hearing in the matter;

5.3 *The venue for the above meetings / hearings shall be Room 66, 5th floor, Ali Chambers, Tamarind Lane, Fort, Mumbai;*

5.4 *The Claimant is directed to duly inform the Respondent on or before 15th August 2023 about the passing of the above Order dated 12th June 2023 including appointment of the present Tribunal and that the matter is now kept on the above dates in September 2023 and October 2023 for the purposes of hearing the final arguments in the matter;*

5.5 *The Claimant to give due notice to the Respondent of the above vide service to be effected by (i) RPAD, (ii) Courier and (iii) Hand-delivery mode. In addition, the Claimant shall also give notice vide substituted service in 2 newspaper (1 in English daily and another in Gujarati daily) having wide circulation in the City of Mumbai. The same shall be complied with on or before 15th August 2023. The Claimant shall place on record all material evidencing steps taken to effect service of the above notice alongwith an affidavit of service on or before 29th August 2023;*

5.6 *...”*

36. In view of the request made on behalf of the Claimant *vide* email dated 30.08.2023 seeking extension of time to comply with the directions dated 22.07.2023, the matter was adjourned to 16.10.2023 – 5 pm onwards for the purposes of passing further directions and orders in the matter;
37. On 16.10.2023, time to comply with the directions dated 22.07.2023 was extended upto 31.10.2023 and the matter was kept on (i) 22.11.2023 and (ii) 11.12.2023 for the purposes of final hearing;
38. In addition to the above, the Claimant was directed to duly inform the Respondent on or before 03.11.2023 about the passing of the Order dated 12.06.2023 including appointment of the present Tribunal and that the matter is now kept on the above dates in November, 2023 and December, 2023 for the purposes of hearing the final arguments in the matter;
39. Further, the Claimant was also directed to give due notice to the Respondent of the above *vide* service to be effected by (i) RPAD, (ii) Courier and (iii) Hand-delivery mode. In addition, the Claimant was also directed to give notice *vide* substituted service in 2 newspaper (1 in English daily and another in Gujarati daily) having wide circulation in the City of Mumbai;
40. On 22.11.2023, the Claimant duly filed its Affidavits of Service all dated 09.11.2023 placing on record steps taken by it to serve and inform the Respondent as directed *vide* Minutes / Directions dated 22.07.2023 and 16.10.2023 including steps taken to effect and complete substituted service by giving notice *vide* 2 newspapers. The Tribunal condoned the delay in filing the said Affidavits in the interest of justice as the same had been filed before commencement of the final hearing and the scanned copies of the same were emailed to the Tribunal on 17.11.2023;
41. The public notice given in the 2 newspapers clearly informed and the Respondent was put to notice of the arbitration proceedings and that the same are kept for final hearing on : (i) 22.11.2023 and (ii) 11.12.2023 and that in case the Respondent is absent/ unrepresented, matter will be proceed with and the Tribunal will hear the final arguments in the matter *ex-parte*;

42. Despite above notices, the Respondent did not appear on 22.11.2023 either personally or through an advocate/ pleader. Mr. Ray, Ld. Advocate for the Claimant commenced his final hearing arguments on 22.11.2023 which remained incomplete at the end of the day;
43. On 11.12.2023, once again the Respondent did not appear either personally or through an advocate/ pleader. Mr. Ray, Ld. Advocate for the Claimant resumed his arguments in the final hearing and concluded the same. Accordingly, the matter was closed for Award on 11.12.2023;

Consideration :

44. The only question that arises before me to be decided is whether the Claimant is entitled to the claim raised given the fact that there is no defence to the same as the Respondent has neither filed his written statement to the claim nor has the Respondent appeared in the arbitration proceedings. In view of the facts recorded above, it clearly emerges that it was on the request of the Respondent that the Claimant extended the subject credit facility of Rs.10,00,00,000/- (Rupees ten crores Only) as per the sanction recorded in the Sanction Letter dated 15.09.2018 and in terms of the Master Credit Facility Agreement also dated 15.09.2018 ("**the said Agreement**"). Perusal of the clauses of the Master Credit Facility Agreement shows that the facility was extended at a rate of interest of 13% per annum compounded daily. The Respondent having signed the said Agreement and having taken the benefit of a facility under the said Agreement is bound to comply with the stipulations in the contract including facing the consequences in case of default and breach thereof. The subsequent conduct of the Respondent also clearly brings out that the Respondent never disputed the said Agreement and/or the terms and conditions as captured in the said Agreement based on which the facility was granted to the Respondent;
45. To secure the above facility, the Claimant made the Respondent sign and execute the Master Pledge Agreement also dated 15.09.2018 whereunder the Respondent created in favour of the Claimant, a pledge in respect of 10,61,000 equity shares that were held by the Respondent in the Company -

Ashapura Intimates Fashion Limited. The Respondent was at the relevant time, the Promoter and Managing Director of the said entity Ashapura Intimates Fashion Limited. It has been informed to me that the said entity is presently under liquidation;

46. Having perused the Statement of Claim and the Affidavit in lieu of Examination in Chief filed by the Claimant's witness CW-1 namely Mr. Sandip Vare and reading the same alongwith the bank account statement of the Claimant issued by its bankers - Standard Chartered Bank, M.G. Road Branch, Mumbai (marked as Exhibit 6), it can be safely concluded that the Respondent was given an amount of Rs.10,00,00,000/- (Rupees ten crores only) on 01.10.2018 under the above facility;
47. From the evidence which has come on record from the side of the Claimant, it emerges that shortly thereafter, the Respondent stopped attending his office and was untraceable including at his usual place business and residence. Simultaneously, there emerged several reports in the newspapers that the Respondent and the said entity Ashapura Intimates Fashion Limited were severely indebted to several financial institutions apart from the Claimant and that the Respondent's disappearance was linked to such financial crisis;
48. The above events resulted in drastic reduction in the market value of the shares pledged by the Respondent under the said Agreement. On 01.10.2018, the market value of the shares pledged by the Respondent was Rs.28,98,65,200/- (Rupees twenty eight crores ninety eight lakhs sixty five thousand and two hundred only) and at the close of trading hours on 08.10.2018, the same plummeted to Rs.20,08,47,300/- (Rupees twenty crores eight lakhs forty seven thousand and three hundred only);
49. The Claimant *vide* its letter dated 09.10.2018 and as per the rights it had under the Master Credit Facility Agreement read with the Master Pledge Agreement and other finance documents proceeded to recall the above facility provided to the Respondent and called upon the Respondent to repay an amount of Rs.10,03,56,164.38/- (Rupees ten crores three lakhs fifty six thousand one hundred and sixty four and paise thirty-eight only) by 10.10.2018;

50. The Respondent failed and neglected to comply with the above demand made by the Claimant and also did not bother to reply or respond to the above letter of 10.10.2018. The Claimant thereafter proceeded to address a demand notice dated 10.12.2018 through its Advocates and called upon the Respondent to inter alia pay and clear the outstanding amounts as more particularly mentioned and recorded therein;
51. Subsequent to the above and in view of the continued default on the part of the Respondent that the Claimant was constrained to invoke the arbitration mechanism *vide* its notice dated 01.04.2019 in terms of Article 16.2 of the Master Credit Facility Agreement, which provided for arbitration as the mode of resolution of disputes between the parties;
52. The Claimant in view of the specific rights and entitlements that it had under the Master Credit Facility Agreement read with the Master Pledge Agreement and other finance documents proceeded to sell certain other securities of the Respondent that were available with the Claimant. As a result of this exercise, the Claimant was able to recover an amount of Rs.4,39,68,485.23/- (Rupees four crore thirty-nine lakhs sixty-eight thousand four hundred and eighty-five and paise twenty-three only) and the same has been credited in the ledger accounts of the Respondent maintained by the Claimant in its books of accounts;
53. As on 31.08.2019, the Claimant has made a claim for an amount of Rs.6,71,45,435.51/- (Rupees six crores seventy-one lakhs forty-five thousand four hundred and eighty-five and paise fifty-one only) along with further interest at the rate of 13% p.a. on the overdue amount aggregating to a total interest component of Rs.30,647/- (Rupees thirty thousand six hundred and forty-seven only) as per the Particulars of Claim annexed to the Statement of Claim. The Claimant has also claimed further interest on the outstanding amount at the rate of 18% per annum from 01.09.2019 till the date of payment and/or realization thereof;
54. The erosion in value of the security held by the Claimant in my view constituted an "event of default" under the Master Credit Facility Agreement

read with the Master Pledge Agreement and other finance documents and more particularly Clause 13 which records the various events of defaults;

55. Clause 13.12 of the said Master Credit Facility Agreement reads as under :

“13.12 Security in jeopardy

i. The Security created under any Security Documents for the Facilities is in jeopardy or ceases to have effect.

ii. Any Obligor ceases to hold the legal or beneficial interest in the assets over which the Security under the Security Document operates.”

56. The Claimant has also rightly relied on the definition of material adverse effect contained in the Master Credit Facility Agreement to support its case and the claims raised;

57. In view of the clauses of the Master Credit Facility Agreement read with the Master Pledge Agreement and other finance documents, in case of an event of default occurring, the Claimant has the right to declare all amounts payable in respect of the above facility to be due and payable immediately. Accordingly, on 10.10.2018, after the drastic decrease in the market prices of the pledged shares and the continued default, the Claimant recalled the above facility and demanded repayment of the outstanding amount from the Respondent;

58. From the documents and facts placed on record, which have remained uncontroverted all throughout, it is evident that :

58.1 the Respondent received an amount of Rs.10,00,00,000 (Rupees ten crores only) under the Facility advanced by the Claimant;

58.2 the Respondent breached the terms of the Facility and committed default in repayment of the outstanding amount;

- 58.3 despite receiving the demand letter dated 9th October 2018 (vide email on 10th October 2018), and issuance of a demand notice dated 10th December 2018 and an arbitration invocation notice dated 1st April 2019, the Respondent neither paid the outstanding amount, nor did the Respondent come forward with any defence; and
- 58.4 despite being duly served by way of substituted service (i.e. notice given vide newspaper publication) of the meetings / hearings held in the present proceedings as also the order of the Hon'ble Bombay High Court, the Respondent has neither remained present in such proceedings, nor complied with the directions/ orders passed by the Tribunal from time to time;
59. I am satisfied that the documents relied upon by the Claimant, which documents form the basis of the claims raised by the Claimant, stand proved in light of the evidence given by the Claimant's witness CW-1. The evidence given by the Claimant's witness Mr. Sandip Vare (CW-1), in my view, proves the case of the Claimant. The statements marked as Exhibit C-14 and Exhibit C-15 demonstrating the manner in which the claims have been calculated are as per the terms of the Master Credit Facility Agreement read with the Sanction Letter;
60. In view of the above, the following Award is passed in favour of the Claimant and against the Respondent :
- 60.1 The claim for the amount of Rs.6,71,76,132/- (Rupees six crores seventy-one lakhs seventy-six thousand one hundred and thirty-two only) is granted in favour of the Claimant and the Respondent is directed to pay the same;
- 60.2 The Claimant is also entitled to and is accordingly granted interest on the above claim amount of Rs.6,71,76,132/- (Rupees six crores seventy-one lakhs seventy-six thousand one hundred and thirty-two

only) at the rate of 13 % per annum during the pendency of the arbitration proceedings i.e. from 01.09.2019 to 31.03.2024. The claim for interest at the rate 18 % per annum post 01.09.2019 is rejected. No case is made out for grant of interest at the rate of 18 % per annum post 01.09.2019;

60.3 The aggregate of the above amounts awarded at 60.1 and 60.2 above shall further carry simple interest at the rate of 8% p.a. from the date of this Award i.e. from 1st April 2024 onwards till the date of payment and/or realization thereof in full and final. The post award simple interest is granted at the rate of 8% per annum being the usual bank rate of interest given by the nationalized banks. The same is in accordance with the present regime. The claim for interest at a higher rate for the period post the Award is accordingly rejected;

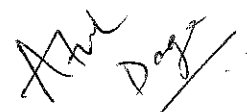
60.4 Now coming to the question of costs to be awarded is concerned, I am inclined to grant costs quantified in the sum of Rs.6,00,000/- (Rupees six lakhs only) to the Claimant. The Claimant was compelled to initiate arbitration proceedings and was required to file application before the Hon'ble Bombay High Court. The Claimant was required to undergo the process of arbitration including engaging lawyers / advocates and incurring expenses in the present arbitration including payment of arbitral fees. The costs awarded are reasonable and proper considering the facts of the case. The costs awarded to be paid within a period of 90 days from the date of the award, failing which, the cost awarded shall carry simple interest at the rate of 8 % per annum as per Section 31(4)(g) of the Arbitration and Conciliation Act, 1996 till the date of payment / realization thereof, in full;

60.5 The Claimant to upload and make available on its official website a scanned copy of the present Award for a period of 150 days from the date of the receipt of the Award. The Claimant to prominently highlight the link to access, open and download the said scanned copy of the present Award;

- 60.6 The Claimant shall also duly inform the Respondent of the passing of the present Award in favour of the Claimant alongwith a copy of the present Award *vide* communication effected by (i) R.P.A.D, (ii) Courier and (iii) Hand-delivery mode on the last known address of the Respondent. In addition, the Claimant shall also give notice *vide* publication in 2 newspapers (1 in English daily and another in Gujarati daily) having wide circulation in the city of Mumbai about passing of the present Award in favour of the Claimant and specifically mention the link to access, open and download the scanned copy of the present Award that is to be made available on the official website of the Claimant as directed at 60.5 above;
- 60.7 The order/ direction at 60.6 above shall be complied with on or before 15.04.2024 and all material evidencing compliance with directions/ orders at 60.5 and 60.6 above alongwith an affidavit shall be filed with the Tribunal on or before 30.04.2024;
61. The arbitration reference made *vide* Order dated 12.06.2023 passed in Commercial Arbitration Application No.19 of 2022 is disposed of in the above terms.

Award accordingly.

Dated this 1st day of April 2024 at Mumbai



Atul Daga
Sole Arbitrator