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WOULD THE CHIT FUNDS ACT, 1982, BEING A SELF-CONTAINED CODE, PREVAIL OVER THE PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT, 1996?

9 July 2019

The Bombay High Court (Court), in its recent decision in *Dinesh Jaya Poojary vs Malvika Chits India Pvt Ltd (Arbitration Petition No 549 of 2016)*, had the occasion to deal with the above question in a petition filed under Section 34 of the Arbitration & Conciliation Act 1996 (Arbitration Act), which *inter alia*, challenging the award of an arbitral tribunal (Impugned Award) on the ground that the Arbitrator acted without jurisdiction.

Background:

One Mr Harish Pujary (Subscriber), the brother of the Petitioner, was a member of the chit group of the Respondent (a Chit Fund Company). The Subscriber executed an agreement with the Respondent to pay future/ balance subscription with all other amounts due and payable under the chit fund scheme till the date of termination of Chit Fund.

As per the Respondent, Mr Harish Pujary was a 'subscriber' within the meaning of Section 2(r) of the Chit Funds Act 1982 (Chit Funds Act) and the Respondent was a 'foreman' within the meaning of Section 2(j) of the Chit Funds Act.

It was alleged by the Respondent, that the Petitioner in his Agreement of Guarantee dated 13 August 2012 (Guarantee) in favour of the Respondent, admitted to a sum of INR 93,34,100/- being due and payable by the Subscriber. It was the case of the Respondent, that the Petitioner agreed to pay a settlement amount of INR 65 Lakhs and in the event of default of payment of the said amount, he would be liable to pay the entire sum of INR 93,34,100/-. The Respondent called upon the Petitioner to pay INR 60 Lakhs based on the Guarantee, and thereafter on his failure to pay, the Respondent invoked arbitration under Clause 6 of the Guarantee, though the Guarantee itself was disputed by the Petitioner.

The Arbitrator passed the Impugned Award in favour of the Respondent, directing the Petitioner to pay an amount of INR 93,34,100/- with interest at the rate of 18% p.a. The Petitioner sought to challenge the Impugned Award on several grounds, including on the ground of lack of jurisdiction of the Arbitrator, which was considered and decided at the outset by the Court.

Primary contentions of the Petitioner on jurisdiction of the Arbitrator:

- Admittedly, Mr Harish Pujary being a 'subscriber' within the meaning of Section 2(r) of the Chit Funds Act, a dispute pertaining to the management of a chit

business between a foreman (i.e. the Respondent) and surety of a subscriber (i.e. the Petitioner) could be referred only to the Registrar for arbitration;

- In view of the non-obstante clause in section 3 of the Chit Funds Act and it being a special act; provisions thereof would prevail over the provisions of the Arbitration Act;
- Section 64(3) of the Chit Funds Act provides that Civil Court does not have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to under Section 64(1);
- The Chit Funds Act does not distinguish between an agreement of guarantee executed on the date of a subscriber becoming a member of the Chit Fund or upon the subscriber committing a default. Thus, there is no distinction between a surety of a subscriber and surety for debt under Section 64 of the Chit Funds Act.

Primary contentions of the Respondent on jurisdiction of the Arbitrator:

- Liability of the subscriber was crystallized prior to 13 August 2012 and the agreement was entered into thereafter. Thus the provisions of the Chit Funds Act will not be applicable to the parties;
- The Guarantee clearly contained an arbitration clause which was rightly invoked and the same was an independent agreement between the parties;
- Since the Agreement was entered into after the defaulted amount of the subscriber getting crystallized and was not executed under the provision of the Chit Funds Act, the Petitioner can neither be considered as subscriber or surety as described in Section 64(1)(a) and (b) of the Chit Funds Act.

Findings of the Court:

The Court observed that the provision for arbitration provided under the Chit Funds Act was expansive enough to include surety of past, present or deceased subscriber as provided under Section 64(1)(b). Hence, even if the subscriber in the instant case was considered to be a past subscriber, a dispute arising in relation to surety of such past subscriber could only be referred to the Registrar for Arbitration.

Perusal of the Statement of Claim filed by the Respondent also shows that recovery was sought from the Petitioner as surety or guarantor on behalf of the subscriber. The above averments make it clear that the claim against the Petitioner was in the capacity of a surety of the Subscriber under the Chit Funds Act and hence the submission of the counsel for Respondents that the Guarantee was an independent transaction outside purview of the Chit Funds Act, cannot be accepted.

The Court further observed that the disputes referred to arbitration fall squarely within the ambit of disputes pertaining to the management of the chit business. Whether there existed a dispute or not within the ambit of section 64(1) of the Chit Funds Act can only be decided by the Registrar as provided under Section 64(2) thereof.

Section 64 (3) of the Chit Funds Act also clearly indicates that if a Civil Court is barred from entertaining any suit or other proceedings, arbitral proceedings initiated by the Respondent for recovery of the amount arising out of disputes relating to chit business pertaining to the management of chit business also cannot be entertained.

Even if the Petitioner allegedly entered into any such an agreement of guarantee with the Respondent, such agreement of guarantee recording arbitration agreement was

contrary to Sub-section (1) of Section 64 read with Section 3 of the said Chit Funds Act.

The Court further referred to various provisions of the Chit Funds Act, vis-à-vis for impleadment of third parties, appeal against decision of Registrar or nominee or Registrar, appeal before the State Government and decree issued by the Registrar being deemed a decree of a Civil Court.

The Court held that on conjoined reading of the said provisions would indicate that the Chit Funds Act is a self-contained code and as such, the Arbitration Act would not apply to disputes relating to chit business.

Accordingly, the Court set aside the Impugned Award and held that the Arbitrator exceeded his jurisdiction whilst entertaining the claims made by the Respondent and allowing the said claims.

Comment:

The decision of the Court provides much needed clarity with regard to arbitrability of disputes arising out of chit fund transactions vis-à-vis jurisdiction of civil courts.

However, the position with respect to jurisdiction of consumer courts in entertaining chit fund disputes is still to be settled in view of the divergent views taken by the Madras High Court in *N Venkatsa Perumal vs State Consumer Disputes Redressal Commission (2003 CTJ 261 (CP))*, which held that consumer forums had no jurisdiction to entertain complaints pertaining to chit fund transactions, and, the Andhra Pradesh High Court in *Margadarsi Chit Fund vs District Consumer Disputes Redressal Forum (2004 CTJ 704 (CP))* which held that consumer forums can deal with chit fund transactions.

Further, the National Consumer Disputes Redressal Forum in a catena of decisions have held that the Consumer Protection Act provides an additional remedy in terms of Section 3 thereof.

Therefore, pending a view taken by the Supreme Court, the jurisdictional issue of the consumer forum regarding chit funds remains ambiguous.

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