



ARBITRATION AND CONCILIATION

Assignee, having stepped into the shoes of the assignor, can invoke arbitration clause: Bombay High Court.

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In a recent order, in the matter of *M/s. Siemens Factoring Private Limited v. Future Enterprises Private Limited*^[1] the Hon'ble Bombay High Court ("the Court") held that an assignee, though not a party but having stepped into the shoes of the assignor, can invoke the [arbitration clause](#) of an agreement. The Court held that in addition to the other rights and remedies of the assignor, the remedy to invoke arbitration would also stand assigned in the assignee's favour.

Facts

Future Enterprises Private Limited ("**Respondent**") and LIQ Residuals Private Limited ("**LIQ**") entered into a Master Rental Agreement ("**MRA**") for renting out equipment. In accordance with the MRA, LIQ notified the Respondent of the assignment of the rental payments in favour of the M/s. Siemens Factoring Private Limited ("**Applicant**"). The Respondent acknowledged the said assignment by receiving the notification of assignment ("**the Notification**") from LIQ.

Pursuant to the assignment, the Applicant and LIQ entered into a Sale of Receivable Agreement on distinct dates. As a result, LIQ assigned the receivables to the Applicant due to LIQ under the aforesaid MRA. Additionally, LIQ also executed an irrevocable power of attorney in the Applicant's favour to this effect.

A dispute arose regarding the payment of sums as stipulated under the MRA. The Respondent failed to pay the rental amount thereby constraining the Applicant to file this application under Section 11 under the [Arbitration and Conciliation Act, 1996](#) (A&C Act) for appointment of a Sole Arbitrator as provided under the MRA and acknowledged under the Notification.

Contentions

The learned counsel for the Respondent while relying on the judgment passed by the Court in *Vishranti CHS vs. Tattva Mittal Corporation Pvt. Ltd.*^[2] objected to the invocation of arbitration by the Applicant in the capacity of the assignee. The Learned Counsel submitted that the MRA and the Notification are not signed by the Applicant. In view of the same, the learned counsel further submitted as there is no valid arbitration agreement between the Applicant and the Respondent and that the said application shall be rejected and relief seeking appointment of the arbitrator shall be refused.

The learned counsel for the Applicant called for the Court's attention to the Notification, submitting that though the MRA does not bear the signature of the Applicant, the same has been acknowledged in the said Notification. The learned counsel also brought to the notice of the Court rental payments made by the Respondent to the Applicant. He further submitted that in light of the aforesaid, it is abundantly clear that the Applicant has taken over the position of LIQ, thereby assigning all the obligations, rights and privileges as set out in the MRA which includes the assignee's rights to invoke arbitration.

Observations of the Court:

The Court read out the relevant clauses of the MRA as well as the Notification and held that the arbitration clause in the Notification resembled to that of provided in the MRA. The Court further held that though the said documents have not been signed by the Applicant, the Notification read with MRA makes it amply clear that the assignee, Applicant, has stepped into the shoes of LIQ and therefore is entitled to all rights, discretions, and remedies of LIQ that have been assigned thereunder.

Relying on the contentions of the learned counsel of the Applicant, the Court further held that the MRA also defines LIQ to include its assignees. Moreover, the Court also considered that the Respondent had made rental payment to the Applicant thereby acknowledging the status of assignee of the Applicant under the MRA and the Notification.

Concluding the observations of the Court, since Applicant had been assigned with all the rights and remedies of LIQ and Respondent had expressly acknowledged the assignment of the same by making rental payments to the Applicant, there was no need for a distinct arbitration agreement to be executed between the Applicant and Respondent.

IndiaLaw LLP represented the Applicant in this matter.

[1] *M/s. Siemens Factoring Private Limited v. Future Enterprises Private Limited*. Arbitration Application (Comm.) No. 174 of 2022.

[2] ARBAP No. 3311 of 2020