

IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 627/2014 & IA No. 25041 of 2014 (for stay)

PRANIDHI COMMERCE PVT LTD Petitioner

Through: Mr. A.S. Chandhiok, Senior
Advocate with
Mr. Anil Airi, Mr. Kamal Budhiraja and
Ms. Shruti Agrawal, Advocates.

versus

RELIGARE FINVEST LTD Respondent

Through: Mr. Sanjeev Puri, Senior
Advocate with
Mr. Ruchin Midha, Advocate.

With

ARB.P. 628/2014 & IA No. 25049 of 2014 (for stay)

KALYANI BARTER PVT LTD Petitioner

Through: Mr. A.S. Chandhiok, Senior
Advocate with
Mr. Anil Airi, Mr. Kamal Budhiraja and
Ms. Shruti Agrawal, Advocates.

versus

RELIGARE FINVEST LTD. Respondent

Through: Mr. Sanjeev Puri, Senior
Advocate with Mr. Ruchin Midha,
Advocate.

With

ARB.P. 629/2014 & IA No. 25055 of 2014 (for stay)

YUTHIKA COMMERCIAL PVT. LTD. Petitioner

Through: Mr. A.S. Chandhiok, Senior
Advocate with
Mr. Anil Airi, Mr. Kamal Budhiraja and
Ms. Shruti Agrawal, Advocates.

versus

RELIGARE FINVEST LTD Respondent
Through: Mr. Sanjeev Puri, Senior
Advocate with
Mr. Ruchin Midha, Advocate.

With

ARB.P. 630/2014 & IA No. 25092 of 2014 (for stay)

PLUS CORPORATE VENTURES PVT. LTD. Petitioner
Through: Mr. A.S. Chandhiok, Senior
Advocate with
Mr. Anil Airi, Mr. Kamal Budhiraja and
Ms. Shruti Agrawal, Advocates.

versus

RELIGARE FINVEST LTD Respondent
Through: Mr. Sanjeev Puri, Senior
Advocate with
Mr. Ruchin Midha, Advocate.

and

ARB.P. 631/2014 & IA No. 25096 of 2014 (for stay)

MARUBHUMI DEALERS PVT. LTD. Petitioner
Through: Mr. A.S. Chandhiok, Senior
Advocate with
Mr. Anil Airi, Mr. Kamal Budhiraja and
Ms. Shruti Agrawal, Advocates.

versus

RELIGARE FINVEST LTD. Respondent
Through: Mr. Sanjeev Puri, Senior
Advocate with Mr. Ruchin Midha,
Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER
20.01.2015

1. These are petitions under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator to adjudicate the disputes between the parties.

2. Mr. A.S. Chandhiok, learned Senior counsel for the Petitioners, relies on the decisions of this Court in ***Bhartia Cutler Hammer Limited v. AVN Tubes Limited 1995 (33) DRJ 672*** and ***A.V.N. Tubes Limited v. Bhartia Cutler Hammer Limited 1992 (2) Arb LR 8***, and submits that both acts of reference of disputes to an Arbitrator and the appointment of an Arbitrator cannot be by the same party and that such a clause would be, on the face of it, void. He submits that Clause 7.12 of the Loan Agreement dated 25th April 2011 can at best be read as envisaging reference of disputes to arbitration being sought by the Petitioner and the appointment of the Arbitrator by the Respondent/Lender whereas in the instant cases it is the Respondent/Lender which is the party raising the disputes and also unilaterally nominating the Arbitrator. Mr. Chandhiok submits that although the Petitioner has already nominated the Arbitrator, it will be open to the Court for appointing an Arbitrator under Section 11 of the Act.

3. Mr. Sanjeev Puri, learned Senior counsel for the Respondent, draws attention of the Court to the decision of the Supreme Court in ***Antrix Corporation Limited v. Devas Multimedia Pvt. Ltd. 2013 (2) Arb LR 226 (SC)*** and the decision of this Court in ***Delhi Inframart Pvt. Ltd. v. N.K. Singhal*** (decision dated 13th November 2014 in Arb. P. No. 439 of 2014). He points out that by letter dated 4th December 2014 the Respondent appointed a sole Arbitrator in terms of Clause 7.12 of the

Agreement. Once the Arbitrator has been appointed, the question of entertaining the present petitions under Section 11 of the Act does not arise.

4. The above submissions have been considered. Clause 7.12 of the Agreement reads as under:

“7.12 Arbitration: Any and all disputes, claims, differences arising out of or in connection with this Agreement and Schedule (s) of Terms/Repayment Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the Lender and the award thereupon shall be binding upon the parties to this Agreement. The place of the arbitration shall be in Delhi, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 any statutory amendments thereof.”

5. A perusal of Clause 7.12 reveals that a dispute can be referred by either party to arbitration. This Court is unable to agree with the reading of the said Clause in the manner suggested by Mr. Chandhiok. There is nothing to indicate that if the disputes are referred to Arbitrator by the Lender, it is disabled from appointing the Arbitrator unilaterally. The arbitration clause considered by the Court in **A.V.N. Tubes Limited v. Bhartia Cutler Hammer Limited** (supra) gave one of the parties the exclusive right to go in for arbitration. The same party was also given the right to appoint the Arbitrator. In the circumstances, the Court held the said clause to be void. In the present case, however Clause 7.12 permits either party to seek reference of the disputes to arbitrator. Moreover, an arbitration agreement, signed voluntarily by the parties, envisaging

appointment of the Arbitrator by one of the parties cannot *per se* be declared invalid on that score.

6. In any event once the Respondent has acted on the said clause and appointed an Arbitrator then the question of entertaining the present petitions under Section 11 of the Act for appointment of an Arbitrator does not arise. The decision of the Supreme Court in ***Antrix Corporation Limited*** (supra) clarifies the legal position as under:

“33. The law is well settled that where an Arbitrator had already been appointed and intimation thereof had been conveyed to the other party, a separate application for appointment of an arbitrator is not maintainable. Once the power has been exercised under the Arbitration Agreement, there is no power left to, once again, refer the same disputes to arbitration under Section 11 of the 1996 Act, unless the order closing the proceedings is subsequently set aside. In ***Som Datt Builders Pvt. Ltd. v. State of Punjab 2006 (3) RAJ 144 (P&H)(DB)***, the Division Bench of the Punjab and Haryana High Court held, and we agree with the finding, that when the Arbitral Tribunal is already seized of the disputes between the parties to the Arbitration Agreement, constitution of another Arbitral Tribunal in respect of those same issues which are already pending before the Arbitral Tribunal for adjudication, would be without jurisdiction.”

7. The challenge to the validity and existence of an arbitration agreement can be raised before the learned Arbitrator under Section 16 of the Act. However, as far as the present cases are concerned, such challenge by the Petitioners, if any, can be on grounds other than the one urged above

which has been negated by the Court.

8. With the above observations, the petitions and the pending applications are dismissed.

S. MURALIDHAR, J.

JANUARY 20, 2015

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