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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 679/2016**

RELIGARE FINVEST LIMITED

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with
Mr. Neeraj Sharma, Ms. Archana
Lakhotia, Mr. Rushil Chandra & Ms.
Dakshayani Sharma, Advocates.

versus

STRATEGIC CREDIT CAPITAL PVT. LIMITED

..... Respondent

Through: Mr. Rajiv Nayar & Ms. Pratibha M. Singh,
Senior Advocates with Mr. Manik Dogra
& Mr Sidhartha Das, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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08.12.2016

1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 ('Act') filed by Religare Finvest Limited (RFL) seeking the appointment of an Arbitral Tribunal for adjudicating the disputes between the parties arising out of an Assignment Agreement dated 25th July, 2015, which contains an arbitration clause.

2. The said Assignment Agreement was followed by a Supplemental Agreement (SA) of the same date which extended the validity period of the standby letter of credit (SBLC) till 22nd June, 2016 and recorded the change in the balance purchase consideration, which the Respondent/Assignee was prepared to pay.

3. A preliminary objection is raised by Mr. Rajiv Nayar, learned Senior Advocate appearing for the Respondent that the Assignment Agreement which contained the arbitration clause as well as the Supplementary Agreement are both insufficiently stamped in terms of the Indian Stamp Act, 1899 (ISA). He points out that the rates of stamp duty in Delhi for a Deed of Conveyance at Serial No.23, Schedule IA of the ISA would be 5% of the consideration amount. He points out that the consideration amount disclosed in the Assignment Agreement is Rs.550 crore whereas the stamp duty paid is Rs.1 lakh. Further as regards SA, he points out that the stamp duty paid is a mere Rs.200. Relying on the decision of this Court dated 11th April, 2012 in OMP No.266/2011 *Avantha Holding Limited v. Osian's Connoisseurs of Art (P) Ltd. & Anr.*, he submits that the Court should impound the above instruments in original and permit the Petitioner to proceed with the matter only after the requisite stamp duty has been paid.

4. Mr. Sandeep Sethi, learned Senior Advocate for the Petitioner produces a copy of the Gazette Notification dated 12th January, 2006 whereby in exercise of the powers conferred by Section 9 of the ISA, the Lieutenant Governor of the National Capital Territory of Delhi has reduced “.....the duty with which an instrument of securitization of loan or assignment of debt with underlying securities is chargeable under Article 23 of Schedule 1A of the Indian Stamp Act, 1899 as applicable to Delhi to one rupee for every one thousand rupees or part thereof, of the loan securitized or debt assigned with underlying securities, subject to a maximum of rupees one lakh.” He submits that in view of the above amendment the maximum stamp duty of Rs.1 lakh has been paid as far as the Assignment Agreement is concerned. As regards SA, he submits that it is a mere

extension of the period of validity of the SBLC. The arbitration clause remains unchanged.

5. Having considered the above submissions, the Court is satisfied that in view of the amendment brought about to the Schedule of the ISA as far as agreements of Assignment of debt with underlying securities is concerned, the preliminary objection cannot be sustained.

6. It is then contended by Mr. Nayar that the Respondent did not receive the notice dated 2nd September, 2016 issued by the Petitioner invoking the arbitration clause.

7. Here again the Court finds that the Petitioner has placed on record the requisite proof of delivery of such notice on the Respondent by way of a tracking report issued by the postal authorities. This objection is, therefore, also rejected.

8. Mr. Sethi informs the Court that by the aforementioned notice, the Petitioner has already nominated Mr. Justice S.N. Variava, former Judge of the Supreme Court as its nominee.

9. Mr. Nayar, on the other hand, on instructions, states that the Respondent would be nominating Mr. Justice Vikramajit Sen, a former Judge of the Supreme Court as its nominee arbitrator. Mr. Nayar further states that Justice Sen's formal consent would be obtained within one week.

10. It is expected that both the learned Arbitrators would meet within a period of three weeks from today to finalise the name of the third Arbitrator in order to complete the Arbitral Tribunal.

11. In the event there is any difficulty as far as the appointment of the third Arbitrator is concerned, it will be open to either of the parties to approach this Court for directions.

12. No further directions are called for in this petition. It is disposed of.

13. *Dasti.*

S. MURALIDHAR, J.

DECEMBER 08, 2016

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