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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18.1.2019

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O.M.P. (T) (COMM.) 9/2019

MR. KUNWER SACHDEV

..... Petitioner

Through

Mr. Arvind Varma, Sr. Adv. with Mr. Ajay Bhargava, Mr. Aseem Chaturvedi and Ms. Wamika Trehan, Advs.

versus

HERO FINCORP LIMITED

..... Respondent

Through

None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

I.A. 749/2019

1. Allowed, subject to the petitioner's filing legible copies of documents before the next date of hearing.

O.M.P. (T) (COMM.) 9/2019 & I.A. 748/2019

2. This is a petition in which termination of the mandate of the Arbitrator is sought.

3. In terms of the arbitration agreement obtaining between the parties, the respondent has been given the mandate to appoint an Arbitrator.

4. The subject agreement in which the arbitration agreement has been incorporated is dated 28.3.2015.

5. The petitioner, I am told, is the guarantor of an incorporated entity, which is the principal borrower.

6. I am further informed by Mr. Varma, learned senior counsel, who,

appears for the petitioner, that proceedings have been taken out against the principal borrower by a secured creditor, that is, the State Bank of India under the Insolvency and Bankruptcy Code, 2016.

7. On being queried, Mr. Varma says that there is no allegation of bias against the Arbitrator.

8. Mr. Varma's only apprehension is that the Arbitrator is moving with undue haste in concluding the arbitration proceedings.

9. Mr. Varma has placed before me, the proceeding sheets dated 11.1.2019 and 16.1.2019 to demonstrate this aspect of the matter.

10. I have examined the proceeding sheets of 11.1.2019 and 16.1.2019.

10.1 To my mind, nothing of the kind which Mr. Varma alleges on behalf of the petitioner, emerges from these proceedings.

11. Mr. Varma also submits that via this petition challenge is also laid to the arbitration agreement insofar as it gives liberty to the respondent to appoint an Arbitrator in the matter.

12. In my view, unless grounds are made out for terminating the mandate of the learned Arbitrator, no such direction as prayed can be issued, especially having regard to the fact that not only does the subject agreement predate the 23rd October, 2015 amendment brought about in the Arbitration and Conciliation Act, 1996 but also for the reason that even though the arbitration proceedings have been on, according to the counsel for the petitioner, since November/December, 2018, no challenge was laid to the Arbitrator's appointment. The instant petition was filed on 11.01.2019.

12.1 Besides this, even if I were to hold that the amended 1996 Act applies, a perusal of the Arbitrator's declaration dated 12.12.2018 shows that he has been appointed as an Arbitrator by the respondent in only one more

case apart from the matter in issue. The Fifth Schedule of the amended 1996 Act which sets out the grounds which could give rise to justifiable doubts as to an arbitrator's independence or impartiality under Clause 22 requires a red flag to be raised when a person within the past three years has been appointed as an Arbitrator on two or more occasions by one of the parties or its affiliate; clearly this position does not obtain in the instant case.

13. In these circumstances, I am not inclined to interfere with the matter concerning appointment of the Arbitrator. To be noted, no other aspect was raised in the course of arguments.

14. The petition is, accordingly, dismissed.

15. For the purposes of good order and record, the Registry will scan and upload the proceeding sheets dated 11.1.2019 and 16.1.2019.

JANUARY 18, 2019
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RAJIV SHAKDHER, J