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

+ **ARB.P. 662/2021 & I.A. 8979/2021**

JAI BALAJI LEASING

..... Petitioner

Through: Mr.Chetan Rai Wahi, Adv

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Jagjit Singh, Adv

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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05.10.2021

(Video-Conference)

I.A. 8979/2021 (Section 151 CPC for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

ARB.P. 662/2021

3. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act', in short) seeking appointment of an arbitrator to adjudicate on the disputes between petitioner and the respondents, arising out of a formal contract executed in June, 2017.

4. In June, 2017, a formal contract was executed between the petitioner and the respondents, for leasing of parcel space in R-1 compartment having carrying capacity of 4 tonnes by train no. 12428 for the transportation of parcels from ANVT to REWA for a period of five years, w.e.f. 1st June, 2017 to 31st May, 2022.

5. Accordingly, the Petitioner started operating the parcel leasing space w.e.f. 1st June, 2017.

6. On 4th December, 2020, the competent authority, i.e. the Divisional Railway Manager (Commercial), Delhi terminated the said contract and imposed penalties, thereby holding the petitioner in violation of Clauses 16.3 and 16.6 of the contract.

7. Aggrieved by the said termination, the petitioner *vide* letter dated 11th February, 2021, issued a notice invoking arbitration seeking appointment of an arbitrator for adjudication of the disputes between the parties to the respondents.

The arbitration clause under the contract reads as under:

“26.4 In the event of any difference of opinion or dispute between the Railway Administration and the Leaseholder as to the respective rights and obligations of the parties hereunder of as the true intent and meaning of these presents or any articles of conditions thereof. Such difference of opinion shall be referred to the sole arbitrator appointed by the General Manager, Northern Railway, Baroda House, New Delhi whose decision shall be final, conclusive and binding on the parties, the intention of the parties being that every matter in respect of this agreement must be decided by him as sole arbitrator and not taken to a Civil Court. In the event of

the arbitrator dying, refusing to act, resigning or being unable to act for any reason it shall be lawful for GM/NR to appoint another arbitrator in place of outgoing arbitrator in the manner aforesaid. All disputes are subject to the territorial jurisdiction of High Court of Delhi.

26.5 The venue of the arbitration shall be decided by the arbitrator.

26.6 The Arbitration and Conciliation Act, 1996 and the rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.”

8. As the aforesaid clause confers absolute authority on one of the parties to the contract to appoint the arbitrator, it flies in the face of Section 12(5) of the 1996 Act as well as the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd*¹, *Bharat Broadband Network Ltd. v. United Telecoms Ltd*² and *Haryana Space Application Centre v. Pan India Consultants (P) Ltd*³ and cannot, therefore, be enforced as it stands.

9. As no arbitrator could be appointed by the parties, the petitioner has moved this Court under Section 11(6) of the 1996 Act, for appointment of an arbitrator.

10. Accordingly, the disputes between the parties are referred to the Delhi International Arbitration Centre (DIAC) for arbitration. The arbitration would be conducted as per the rules and regulations of the

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ (2021) 3 SCC 103

DIAC and the arbitrator would be entitled to fees in accordance with the schedule of fees fixed by the DIAC.

11. The learned Arbitrator is requested to submit the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

12. All contentions of the parties are left open and may be agitated before the learned Arbitral Tribunal.

13. This petition stands allowed in the aforesaid terms with no orders as to costs.

OCTOBER 5, 2021

C. HARI SHANKAR, J

नित्यमेव जयते