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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 643/2020

ECOGREEN ENVIROTECH SOLUTIONS LTD Petitioner

Through: Ms. Aditi Tomar, Adv.

versus

LEASE PLAN INDIA PVT LTD

..... Respondent

Through: Mr. Partisoh Budhiraja, Adv.

+ ARB.P. 821/2020

LEASEPLAN INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Partisoh Budhiraja, Adv.

versus

ECOGREEN ENVIROTECH SOLUTIONS
LIMITED & ANR.

..... Respondents

Through: Ms. Aditi Tomar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

24.02.2021

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1. Both the petitions, one filed by Ecogreen Envirotech Solutions Ltd and the other by Leaseplan India Private Limited, under Section 11 of the Arbitration and Conciliation Act, 1996, seek appointment of a sole arbitrator. The arbitration agreement in question is contained in Clause 14.2 of the Master Lease Agreement dated 10th March, 2017, which reads as under: -

Signature Not Verified

Signing Date: 06.11.2024 17:01:42
Certify that the digital and physical signatures have been compared and the digital document is the same as the physical file and no page is missing.

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"Clause 14.2 (i) - Arbitration and Jurisdiction :- (i) All disputes, differences, claims and demands arising under or pursuant to or concerning this Agreement shall be referred to Arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory amendment or re amendment or re-enactment thereof, subject to the following rules:

- (a) Arbitration shall be conducted by a sole arbitrator to be appointed mutually by the parties.
- (b) The language of arbitration shall be English and place of arbitration shall be Delhi.
- (c) The respective costs of arbitration shall be borne equally by the parties in the first instance; however, the successful party shall be entitled to the costs of arbitration including legal and recovery costs.
- (d) The arbitrator to be appointed hereunder shall be either a retired judge having held a position not lower than Additional District Judge or an advocate recognised by Bar Council of India, having an experience of not less than 10 years in practice.
- (e) The award shall be a speaking award and shall be binding on the parties."

2. The aforesaid arbitration clause *inter alia* provides that the arbitration shall be conducted by a sole arbitrator to be appointed mutually by the parties. The arbitration clause has been invoked by Leaseplan India Private Limited *vide* notice dated 30th September, 2020. However, since the parties could not mutually agree on the name of a sole arbitrator, the present petitions have been filed. The existence of the arbitration agreement is undisputed. Besides, there is also no disagreement between the parties, that disputes have indeed arisen and the same have to be referred to arbitration.

3. The only point of discord that requires to be resolved arises in Arb. P. 821/2020 filed by Leaseplan India Private Limited, wherein two Respondents have been impleaded – (1) Ecogreen Envirotech Solutions Ltd. and (2) A2Z Infraservices Limited. The Petitioner therein, i.e. Leaseplan

India Private Limited contends that although Respondent No. 2 is not a signatory to the Master Lease Agreement dated 10th March, 2017, however, because Respondent No. 1 is a direct subsidiary of Respondent No. 2, and also because Respondent No. 2 has executed an irrevocable, unconditional and continuing Guarantee dated 10th March 2017 in favour of Leaseplan India Private Limited in respect of the obligations of Respondent No.1 under the afore-noted Master Lease Agreement, it should also be made a party to the arbitration proceedings/referred to arbitration.

4. Ms. Aditi Tomar, Advocate appears for both the Respondents in Arb. P. 821/2020. She submits that although Respondent No. 2 is not a signatory to the Master Lease Agreement dated 10th March, 2017, however, without prejudice to the rights and contentions, she has instructions to say that Respondent No. 2 has no objection in opting for the alternate dispute resolution mechanism. She states that the said Respondent shall also join the arbitration proceedings before the Arbitrator appointed by this court for adjudicating the disputes arising out of the Master Lease Agreement and the Guarantee Deed dated 10th March, 2017.

5. Since there is consensus between the parties, it would be in the fitness of things that all the parties are referred to arbitration. Both the counsels jointly pray that a retired judge of High Court be appointed as the sole arbitrator. In view of above, the present petitions are allowed. Hon'ble Ms. Justice Gita Mittal (Retd.), former Chief Justice of the Jammu & Kashmir High Court [Contact Number: +91 9818000220], is appointed as the Sole Arbitrator to adjudicate the disputes between the parties (i) Leaseplan India

Private Limited, (ii) Ecogreen Envirotech Solutions Ltd., and (iii) A2Z Infraservices Limited, arising out of Master Lease Agreement dated 10th March, 2017 and the Guarantee dated 10th March, 2017.

6. The parties are directed to appear before the Learned Arbitrator on 8th March, 2021. This is subject to the arbitrator making the necessary disclosure under Section 12(1) and not being ineligible under Section 12(5) of the Arbitration and Conciliation Act, 1996.

7. The learned Arbitrator will be paid his fee in terms of the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996.

8. The Petition is allowed in the above terms. No order as to costs.


SANJEEV NARULA, J

FEBRUARY 24, 2021

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