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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/101/2023

PRUDENT ARC LIMITED
VS
RASHI ENTERPRISES AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 6th October, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Rohit Banerjee, Adv.

Ms. Shreyashee Das, Adv.

Mr. Himanshu Bhowsingka, Adv.

Mr. Rohan Kumar Thakur, Adv.

...for the petitioner

The Court:- The petitioner seeks appointment of an Arbitrator in the present application filed under Section 11 of the 1996 Act. The order dated 3rd October, 2023 records that the respondents have remained unrepresented despite being served several times. The Court, therefore, proceeds to hear learned counsel appearing for the petitioner. The dispute can be traced back to several Agreements, the first of which is a Service Agreement dated 31st August, 2020 between UGRO Capital Limited and one Hema Engineering Industries Limited. The Agreement essentially was that UGRO Capital Limited will lend money to the suppliers of Hema Engineering Industries Limited. The suppliers are respondent nos. 1 and 2 in the present application. The Service Agreement was extended and/or renewed from time to time. A Facility

Agreement was thereafter executed on 25th September, 2019. It must, however, be noted that there was an earlier agreement dated 25th September, 2019 namely, "Facility Agreement" executed between UGRO Capital Limited and the "Borrower". The Borrower has been named in the Schedule of Terms and is the respondent no. 1 in the application. The facility given by UGRO to Rashi Enterprises/respondent no. 1 was of Rs.80 lakhs. Clause 5 contains the repayment obligations of the Borrower and Clause 15.2, more importantly, records the agreement of the Borrower, i.e., Rashi Enterprises that regardless of anything contrary in any other document executed in relation to the Facility, the lender, that is, UGRO will have the right to assign its rights and obligations under the Facility Agreement without any reference or consent or notice to the Borrower.

In pursuance of Clause 15.2 of the Facility Agreement, UGRO assigned its rights in favour of the petitioner by an Agreement dated 29th September, 2021. This is by way of an Assignment Agreement. The Assignment Agreement was executed between UGRO and the petitioner before this Court and records in Clause (C) that the Assignor UGRO intends to assign to the Assignee (petitioner before this Court) the financing documents along with all rights and that Assignee intends to purchase the loans together with all rights in the financing documents. The respondent no. 1 is mentioned in the list of name of accounts in the very first page of the Assignment Agreement.

Clause 1.1 (c) further records that the borrower means a person to whom a Financial Assistance has been extended by the Assignor/UGRO under any of the financing documents and includes any person who has created a security

interest. The Borrower hence is to be traced back to the Schedule of Payment of the Facility which mentions the respondent no. 1. Clause 2.1.2 of the Assignment Agreement records that the Assignor assigns all agreements and documents along with all rights in favour of the Assignee, that is, the petitioner before this Court. Clause 2.2.5 reiterates the rights of the Assignee.

The Assignee, that is, the petitioner before this Court accordingly enforced its rights against the borrower, that is, the respondent no. 1 and the respondent no. 2 who is the Proprietor of the first respondent as well as guarantor of the loan by way of a notice under Section 21 of the 1996 Act on 28th July, 2022. The petitioner nominated its Arbitrator. The respondents failed to reply to this notice.

The issue which falls for consideration is whether the petitioner can trace its rights back to the Agreements executed between UGRO and the Borrower which is the respondent no. 1. The series of Agreements starting with the Facility Agreement of 2019, the Service Agreement of 2020 and thereafter the Assignment Agreement of 2021 links one Agreement to other and more importantly, assigns the rights of UGRO in favour of the petitioner who then becomes entitled to enforce its rights as a lender in terms of the financing documents against the respondent no. 1. The petitioner has exercised this right and accordingly invoked the Arbitration Agreement. The respondents have remained silent. The issue of assignment was considered by this Court as well as the Delhi High Court in *Kobelco Construction Equipment India Private Limited vs. Lara Mining & Anr.* in AP/181/2023 and AP/182/2023 and *Kotak Mahindra Bank vs. S. Nagabhushan & Ors.*, 2018 SCC OnLine Del 6832, respectively. The

issue in *Kobelco Construction Equipment India Private Limited* was similar but a specific clause of assignment in favour of the petitioner in that case was absent.

Upon considering the purported contents in the Agreements and the expressed intention of the parties containing a specific assignment in favour of the petitioner, this Court is of the view that the application for appointment of an Arbitrator should be allowed. There is indeed a dispute between the parties and one that is relatable to the Facility Agreement.

AP/101/2023 is accordingly allowed and disposed of by appointing Mr. Mumtaz Khan, former Judge of this Court to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 11th October, 2023 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)