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Arb.O.P(Com.Div.)No.503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.503 of 2023 and
Arbitration Application No.430 of 2023

M/s.Indostar Capital Finance Limited,
having its registered office and corporate office at
One Indiabulls Center, 20th Floor,
Tower 2A, Jupiter Mills Compound,
Senapati Bapat Marg, Mumbai – 400 013.
and having its Head Office at
Indostar Tower, 3rd Floor,
22 and 23, Venkatanarayana Road,
T.Nagar, Chennai – 600 017, Tamil Nadu, India
Represented by its Authorized Signatory,
Ms.Anisha Preethi S

... Petitioner

Vs.

1.Vachandee Shipping India Private Limited,
Represented by its Director,
Plot No.640 Ward 12/C. Lilashah Circle,
Gandhidham, Kachchh – 370228.

2.Vandan Chaganbhai Maheshwari,
C/o. Changanbhai Maheshwari,
63/64, Lilashan Circle,
Gandhidham, Kachchh – 370228.

3.Indira Chaganbhai Maheshwari,
C/o. Changanbhai Maheshwari,
63/64, Lilashan Circle,
Gandhidham, Kachchh – 370228.

... Respondents



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Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 28.03.2021 in respect of all the Loan Agreement.

For Petitioner : Mr.M.Arunachalam

For Respondents : Mr.Arun Karthik Mohan

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. This petition has been filed by the petitioner to appoint an Arbitrator in accordance with Clause 37 of the loan agreement deed of hypothecation dated 28.03.2021. Relevant Clause from the Loan Agreement dated 28.03.2021 as also the Deed of hypothecation between the petitioner and the respondents are identical. It reads as under:-

“37.Arbitration

All disputes, differences and/or any claim arising out of or in connection with this Agreement whether during its subsistence or thereafter shall be settled by the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendment thereof and shall be referred to sole arbitrator nominated by the



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Lender. The award passed by the arbitrator shall be final and binding on all Parties of this Agreement. In the event of death of the arbitrator or resignation of the arbitrator or arbitrator unable or unwilling to act as arbitrator for any reason, the Lender shall appoint another person to act as arbitrator for the dispute. The arbitrator so appointed shall be entitled to pass interim order or final order on the hypothecated asset and also any other asset/securities furnished by or on behalf of the Borrower. The venue of the arbitration proceeding shall be Chennai or such other place/location/city which the Lender at its discretion may decide at the time of execution of this Agreement and the proceeding shall be conducted in English language.

38.Jurisdiction

This agreement has been accepted and executed by the Lender in Chennai and all covenant terms conditions hereof including payment shall be observed and performed at Chennai and the Borrower specifically agree, subject to Arbitration clause contained herein that the courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement.”

3. There was an unilateral appointment of an Arbitrator by the petitioner herein and therefore the same was challenged by the respondent herein before the District Judge (Commercial Court), North West District, Rohini Courts, Delhi. 39 Separate orders were passed by the learned Arbitrator on 28.01.2022 which were the subject matter of challenge under Section 34 before the District Judge (Commercial Court), North West District, Rohini Courts, Delhi. The Award were set aside by the Court on 31.08.2022. Pursuant to the orders



passed under Section 34 in respect of 39 Original Petitions filed by the respondent herein, the petitioner invoked Section 21 of the Arbitration and Conciliation Act once again on 23.08.2023. In the said notice under Section 21 of the Arbitration and Conciliation Act, 1996 the petitioner herein has called upon the respondents to pay the balance or in the alternative to come for an arbitration. The respondents have contested this Original Petition on the ground that once the proceedings in respect of arbitration were initiated before the District Judge (Commercial court) North West District, Rohini Courts, Delhi and orders are passed under Section 34 of the Arbitration and Conciliation Act, 1996 only the Courts in New Delhi will have jurisdiction under Section 11 and therefore only the New Delhi as the power to appoint an Arbitrator to resolve the dispute between the parties.

4. Specifically, a reference was made by the learned counsel for the respondent decision of the Hon'ble Supreme Court in **BGS SGS SOMA JV Vs. NHPC Limited** [(2020) 4 SCC 234]. The learned counsel for the respondent further submit that the Hon'ble Supreme Court has held that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the “seat” would alone have jurisdiction to entertain



challenges against the arbitral Award which have been made at the seat.

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5. The learned counsel for the respondent would further submit that as per the same decision of the Hon'ble Supreme Court also clarified that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an Award at that place.

6. Under Clause 38 of the loan agreement which has been extracted above, the place and seat of arbitration is Chennai. Therefore, only the Courts in Chennai have jurisdiction and not the Courts in New Delhi. The respondent had challenged the Award in New Delhi which were set aside by the Court on 31.08.2022.

7. Since there is no dispute that the dispute is arbitrable between the parties, and since the Award passed in the earlier round has been set aside only on the technical plea in the light of the decision of the Hon'ble Supreme Court



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in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited,**

2019 SCC Online SC 1516, I see no impediment in allowing this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996.

8. Considering the above, **Mrs.R.Banumathi, Former Judge, Supreme Court of India, (Mobile No.:7042955477)** residing at **No.C-20, C-Block, Ground Floor, Defence Colony, New Delhi – 110 024**, is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

9. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

10. The learned Arbitrator appointed herein shall be paid fees and other



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incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

11. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs. Consequently, connected application is also closed.

12. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

13. In view of the above, Section 9 application is closed with liberty to the petitioner to file appropriate application/petition under Section 17 of the Arbitration and Conciliation Act, 1996.

19.12.2023

Index : Yes/No

Internet : Yes/No



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Neutral Citation : Yes/No
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C.SARAVANAN, J.

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