



2024:DHC:5878



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 69/2024****MONEYWISE FINANCIAL SERVICES****PVT. LTD.**

.....Petitioner

Through: Ms. Mehvish Khan, Mr.
Shreyas Jain and Mr. Aman Choudhary,
Advs.

versus

**TIRUPATI TRADING COMPANY THROUGH
ITS PROPRIETOR AND ANR.**

.....Respondents

Through: Mr. Amit Gautam, Adv.

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**
06.08.2024

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ARB.P. 69/2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a Loan Agreement dated 1 February 2018 executed between the petitioner and the respondents, whereunder the petitioner claims to have extended certain financial accommodation to the respondents. According to the petitioner, an amount of ₹ 31,11,657/- is due from the respondents to the petitioner.

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3. The loan agreement envisages resolution of disputes between the parties by arbitration. The relevant clause reads thus:

“10.1 Arbitration

Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties, or termination ("Dispute"), shall be referred to a sole arbitrator. The Chairman of Lender shall nominate any reputed person conversant with financing as the Sole Arbitrator. In the event the person so nominated refuses or is unable to act as Arbitrator the Chairman of Moneywise shall nominate another person as the sole arbitrator and so on. The language of the arbitration shall be English. The seat of the arbitration shall be at New Delhi and the language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator's decision. The costs and expenses of the arbitration shall be borne equally by each Party, with each Party paying for its own fees and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall be final and binding.”

4. Though the arbitration clause envisages appointment of an arbitrator by the Chairman of the petitioner, that arrangement is unworkable in view of the law laid down in Section 12(5)² of the 1996 Act, read with a judgment of the Supreme Court in down in ***Bharat Broadband Network Ltd v United Telecoms Ltd***³, ***Perkins Eastman Architects DPC v. HSCC (India) Ltd***⁴ and ***Haryana Space***

² (5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

³ (2019) 5 SCC 755

⁴ (2020) 20 SCC 760

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*Application Centre v Pan India Consultants Pvt Ltd*⁵, which hold that a clause which entitles one of the parties to an agreement to unilaterally appoint an arbitrator is unenforceable in law.

5. The petitioner, therefore, addressed a notice to the respondents under Section 21 of the 1996 Act on 4 November 2023, seeking reference of the disputes to arbitration.

6. The respondents replied on 20 November 2023, denying any liability to the petitioner as well as opposing reference of the disputes to arbitration.

7. The petitioner has, therefore, approached this Court under Section 11(6) of the 1996 Act.

8. I have heard Ms. Mehvish Khan and Mr. Shreyas Jain, learned Counsel for the petitioner and Mr. Amit Gautam, learned Counsel for the respondents.

9. Mr. Gautam also seeks to contend that the petitioner had instituted proceedings against the respondents under Section 138 of the Negotiable Instruments Act, 1881⁶ and that, in the said proceedings, a full and final settlement was arrived at between the parties, as recorded by the concerned Court.

10. It is not necessary for me to enter into that arena, as proceedings under the NI Act are not determinative of any liability which the



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respondents may have towards the petitioner. In any event, these are matters which have to be urged before Arbitral Tribunal, in view of the law laid down in ***SBI General Insurance Co Ltd v. Krish Spinning***⁷.

11. Suffice it to state that, as there is an arbitration agreement between the parties, which is Delhi seated, the present petition has necessarily to be allowed.

12. Accordingly, the dispute is referred to the Delhi International Arbitration Centre (DIAC), which would appoint a suitable arbitrator to arbitrate on the disputes between the parties.

13. The arbitration would take place under the aegis of the DIAC and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per schedule of fees maintained by the DIAC.

14. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

15. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 6, 2024

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Click here to check corrigendum, if any

⁶ "the NI Act" hereinafter
⁷ 2024 SCC OnLine SC 1754