



2024:DHC:4495



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 28th May, 2024*

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ARB.P. 137/2024**HEWLETT PACKARD FINANCIAL SERVICES INDIA PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Sukrit R. Kapoor and Mr. Aviral
Tripathi, Advs. (M-9026252146)

versus

APPLE COLOR LAB & ANR.

..... Respondents

Through: Mr. Sajal Jain, Adv.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') filed by the Petitioner - Hewlett Packard Financial Services (India) Private Limited seeking appointment of Arbitrator in terms of the business loan agreement dated 10th August, 2022, bearing Lease No. 5463668528INDSSS1AIBLA.
3. The case of the Petitioner is that there were supplies of equipment, which were made by the Petitioner and rental payment was to be made by the Respondents. As per the agreement the Petitioner had to purchase the selected equipment which was to be leased-out to the Respondents for their business purposes, against the payment of instalments to the Petitioner. The Petitioner is stated to have purchased the said equipment for Rs. 2,07,22,400/-. However, it is stated that the Respondents failed to make the



payments to the Petitioner towards the said leased equipment, despite numerous reminders and notices. The Petitioner is stated to have sent multiple email reminders to the Respondents between August 2021 and October 2022, urging them to clear the overdue amounts. It is stated that, despite formal notices demanding payment of the overdue instalments, the Respondents failed to regularize their payments. The overdue amounts included Rs. 26,90,510.27/- as of August 16, 2021, and Rs. 25,84,657.34/- as of March 11, 2022. Due to continuous non-payment, the Petitioner issued a Final Demand Notice on 18th April, 2022, requesting payment of Rs. 18,75,132.21/- within seven days. The Respondents are stated to have not complied with the same, leading the Petitioner to issue a Termination and Repossession Notice on 12th October, 2022, demanding payment of Rs. 3,12,83,453/- by October 20, 2022, failing which the Petitioner would encash bank guarantees worth Rs. 59,00,000/-. The Petitioner is stated to have agreed to restructure the overdue payments via a Rescheduling Deed on 11th January, 2022, however, the Respondents failed to adhere to this agreement as well. Consequently, the Petitioner issued a final Demand Notice on 2nd December, 2022, and eventually encashed the bank guarantees.

4. It is stated that the Respondent No.2 - Mr. Madhava Sarbeshwaran is the sole proprietor of the Respondent No.1- Apple Color Lab.

5. There is a substantial amount of outstanding arrears, which have not been paid by the Respondents. The arbitration clause was, accordingly, invoked vide notice dated 6th June, 2023. However, no reply is stated to have been received. The Petitioner, thereafter, sent several reminder emails to the Respondents, however no reply was stated to have been received. It is



averred that as of 5th January, 2024, the Respondents owed the Petitioner Rs. 2,13,16,842.05/-

6. Notice was issued in this matter on 1st February, 2024.
7. Ld. Counsel for the Respondents has entered appearance and submits that his client is willing to explore amicable resolution of the disputes. However, Id. Counsel for the Petitioner submits that he has no instructions in this regard.
8. The arbitration clause in the agreement reads as under:

“7 You agree to sign such other documents and take such other actions as we may require to accomplish the intent and purpose of this Lease. This Lease constitutes the entire agreement between us and you relating to the Equipment superseding all prior agreements and may only be amended in writing signed by you and us. All of your representations, warranties, indemnities and unperformed obligations hereunder shall survive the termination of this lease. All policies, demands and other communications required to be given under this Lease shall be in writing and Shall be deemed to have been given if delivered personally or mailed via certified mail or a nationally recognized overnight courier service. TIME IS OF THE ESSENCE. THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF INDIA. Any dispute or differences whatsoever between the parties arising out of or relating to this lease shall be referred to arbitration in accordance with the Indian Arbitration and Conciliation Act 1996 and any amendments or re-enactments thereof. The arbitration shall be conducted by a sole arbitrator who shall be a retired judge of the High Court or Supreme Court or a legal professional of more than 10 years standing nominated by us. The venue of arbitration shall be



Delhi, India, and the arbitration shall be conducted in the English language. The Award made in pursuance thereof shall be binding on the parties. You acknowledge that neither any Vendor nor any Equipment, salesperson is an agent of ours nor are they authorized to waive or alter the terms of this Lease. Their representations in no way affect any of our rights or your obligations under this Lease.”

9. In this view of the matter, the Court proceeds to appoint the Sole Arbitrator for adjudicating the disputes between the parties. Accordingly, **Mr. Tanodbhav Singh Dev, Advocate (M-9999012345)** is appointed as the Id. Arbitrator in this matter to adjudicate the disputes between the parties. The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (‘DIAC’). The fee of the Arbitrator shall be as per the Fourth Schedule of the Act as amended by the DIAC Rules, 2023.
10. The Id. Arbitrator shall enter reference on 9th October, 2024. List before DIAC on 9th October, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id - delhiarbitrationcentre@gmail.com.
11. In the meantime, parties are free to explore amicable resolution of the disputes.
12. Petition is disposed of in these terms. Pending applications if any are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

MAY 28, 2024
Rahul/bh