



2024:DHC:7313



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 147/2024****M/S YOGESH CHAUDHARY**PetitionerThrough: **Mr. Deepak Thukral, Adv.**

versus

OXYZO FINANCIAL SERVICES PVT LTD**& ANR.**

.....Respondents

Through: **Ms. Malvika Trivedi, Sr. Adv.**
with **Mr. Sanyam Khetarpal, Mr. Annirudh Sharma, Ms. Lisa Sankrit and Mr. Shailendra Sinha, Advs.****CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****19.09.2024**

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1. This petition has been listed along with OMP (I) (Comm) 218/2022.

2. While seriously opposing OMP (I) (Comm) 218/2022, Ms. Malvika Trivedi, learned Senior Counsel for Respondents 1 and 2 does not oppose reference of the disputes to arbitration, leaving all questions of fact and law open for being agitated before the learned arbitrator.

3. The dispute arises in the context of a Master Facility Agreement¹ dated 14 February 2020 read with Addendum dated 28

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August 2020, executed between the parties.

4. The MFA envisaged resolution of disputes by arbitration.

5. Clause 17 of the MFA which so provides reads as under:

“17. Law and Arbitration:

i. The provisions of this Agreement shall be governed by, and construed in accordance with Indians laws. Courts at New Delhi alone shall have jurisdiction.

ii. Arbitration: Any action brought in connection with this Agreement shall be resolved by arbitration as set forth in the following paragraph:

If any dispute, difference, claim or controversy including the matter damages if any (collectively referred to as Dispute) arises between the parties about validity, interpretation, implementation or allege breach of any provision of this Agreement, or anything connected or related to or incidental to this then either party may submit the Dispute to arbitration to be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act 1996, as amended from time to time. Arbitration shall be held at New Delhi, India. The Dispute shall be referred to a suitably qualified sole arbitrator to be appointed by OXYZO. The arbitration proceedings shall be conducted and the award shall be rendered in the English language, The award rendered by the Arbitrator shall be final, conclusive and binding on all parties to this Agreement and shall be subject to enforcement in any court of competent jurisdiction exclusively at New Delhi The cost of arbitration, including cost of preparing and presenting its case and the fees and expenses of the Arbitrator shall be borne by the Financed Party(s), unless the award otherwise provides.”

6. Though Clause 17 envisages appointment of an arbitrator unilaterally by the respondents, which is not permissible in view of the

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law laid down by the Supreme Court in *Perkins Eastman Architects DPC v HSCC (India) Ltd*², *Bharat Broadband Network Ltd v United Telecoms Ltd*³ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴.

7. It appears that reciprocal Section 21 notices were issued by the petitioner to the respondents and by the respondents to the petitioner.

8. There has been no consensus on the identity of the arbitrator to arbitrate on the disputes.

9. The monetary claim by the respondents against the petitioner is to the tune of ₹ 3.68 crores apart from interests and penalty.

10. Accordingly, this Court appoints Mr. Anubhav Bhasin, Advocate (Tel. 9971090069), as arbitrator to arbitrate on the disputes between the parties.

11. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre⁵ and shall abide by its rules and regulations.

12. The arbitrator shall be entitled to charge fees as per the schedule of fees maintained by the DIAC.

² (2020) 20 SCC 760

³ (2019) 5 SCC 755

⁴ (2021) 3 SCC 103

⁵ "the DIAC", hereinafter

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

14. The petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J

SEPTEMBER 19, 2024

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Click here to check corrigendum, if any

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