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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 144/2023**

PUNJAB NATIONAL BANK

..... Petitioner

Through: Mr Debesh Panda, Mr Kanishk Aggarwal and Mr Anant Upadhyay, Advs.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr O.P. Gaggar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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31.01.2024

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator to resolve disputes between the parties.

2. Mr Panda, learned counsel for the petitioner states that the respondent on 28.03.2018 had given an undertaking which reads as under:

“This refers to payments due to us from Punjab National Bank (“PNB”) as captioned.

We understand that you have filed complaints with the Central Bureau of Investigation on 31st January 2018 and on 15th February, 2018 against (a) certain officials of PNB; (b) Firestar International Limited, Firestar Diamond International P Limited, M/s. Stellar Diamonds, M /s. Solar Exports and M/s. Diamond RUS, and their officials and promoter Mr.Nirav Modi; and (c)



Gitanjali Gems Ltd, Gili India Ltd., Nakshatra Brands, Asmi Jewellery India Ltd ., and their officials and promoter Mr. Mehul Choksi. The Complaint relates to issuance of various allegedly fraudulent LOUs and LCs from the offices of PNB on behalf of above entities, including the alleged fraudulent upsizing of the LCs (the “Fraud”).

Subject to receiving the captioned payments in full, we agree and undertake that any payments made to us pursuant to the allegedly fraudulently issued LoU 's and /or LC's that are found by any court of competent jurisdiction or an investigative agency under Indian laws to have been issued pursuant to knowledge of the alleged Fraud or collusion in the alleged Fraud by any existing or past officials/employees of our Bank, shall be returned with interest @ 3 months LIBOR + 50 basis point to PNB within 30 (thirty) days of the aforesaid finding/order or expiry of the period for appeal from the same, whichever is later. We also confirm, agree, undertake and acknowledge that with effect from the date of settling the amount with us in relation to allegedly fraudulently issued LoUs and LCs (the “Settlement Date”), all rights we have as against the persons involved in the alleged fraudulent issuance of LoUs and LCs will stand subrogated to PNB to the extent of the amounts received by us, and we shall have no right to recover any monies directly from the borrower companies or the persons involved in the alleged fraudulent issuance of LoUs and LCs to the extent of the amounts received by us under the LOUs and the LCs. PNB may at its



discretion pursue a civil claim against such persons, and any monies recovered by PNB as a result of such civil action shall be the sole property of PNB, and we shall have no right whatsoever towards such amounts recovered by PNB.

We also confirm and agree that as on the Settlement Date on receipt of the amounts, all claims or disputes raised by us, as to the quantified amount and as asserted arising out of the alleged Fraud or other irregularities committed by the persons in relation to alleged fraudulent issuance of LoUs [and LCs] shall stand fully and finally settled.

On account of the long standing relationship between our Bank and yourself and, the ongoing internal investigations as well as the investigations of various law enforcement and regulatory authorities, our Bank undertakes to ensure that all assistance, documents and information are provided in relation to allegedly fraudulently issued LoUs/LCs as and when requested by PNB the authorities or agencies mentioned herein.

This undertaking shall be governed by and construed in accordance with the laws of India. Any dispute in relation to the rights and obligations contained herein or arising here from shall be subject to and resolved in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and the venue of arbitration shall be [New Delhi]. Subject to the provisions of arbitration as set out above, competent courts in [New Delhi] will have exclusive jurisdiction.”

3. The undertaking had an Arbitration clause. It is stated by Mr Panda



that the said undertaking was acted upon between the parties and pursuant to the undertaking, the petitioner gave a sum of about 118 million dollars.

4. As per the undertaking, the respondent had assured to give all assistance, documents and information which would be sought by the petitioner with regard to fraudulent LoUs/LCs as and when requested.

5. The petitioner through series of letters sought documents from the respondent which were not provided and hence, the notice invoking arbitration was sent on 14.05.2020.

6. Mr Gaggar, learned counsel for the respondent states that all the documents which were in the power and possession of the respondent have already been given and hence, there is no dispute which should be referred to arbitration. He further states that there is an Alternative Dispute Redressal Mechanism and the same should have been invoked by the petitioner.

7. Mr Panda states that that would be re-writing the undertaking dated 28.03.2018.

8. I am unable to agree with the contention of Mr Gaggar as the recourse to ADR mechanism has not been stated in the arbitration clause, and nor is it stated in the counter-affidavit filed by the respondent.

9. I am also unable to agree as, if the petitioner states that there is a dispute and the respondent denies the same, the same itself constitutes a dispute which will be seen by the Arbitrator. A Coordinate Bench of this Court in ARB.P. 686/2020 and ARB.P. 243/2020 in similar circumstances have entertained the petitions and appointed Arbitrator.

10. For the said reasons, the present petition is allowed. The Court proposes to appoint Justice (Retired) Shiavax Vazifdar, former Chief Justice of Punjab and Haryana High Court (Mobile No. 9820102088) as the Sole



Arbitrator to adjudicate the subject disputes between the parties on the same terms and conditions as contained in the ARB.P. 686/2020 and ARB.P. 243/2020.

11. In terms of the undertaking dated 28.03.2018, the venue of Arbitration shall be at New Delhi and the arbitration may be done through VC.

12. The learned Arbitrator is requested to enter reference only after 8 weeks from today as, with consent of parties, the matter is referred to Delhi High Court Mediation & Conciliation Centre.

13. The parties are directed to appear before Delhi High Court Mediation & Conciliation Centre on 09.02.2024 at 04:00 p.m.

14. In case the parties are unable to settle the dispute, learned Arbitrator will enter reference in terms of the order passed today.

JASMEET SINGH, J

JANUARY 31, 2024

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