



2024:DHC:5471



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

+ **ARB.P. 224/2024 & I.A. 10338/2024, I.A. 32413/2024**

RELIGARE FINVEST LIMITEDPetitioner

Through: Ms. Mudrakshi, Advocate.

versus

SKIL INFRASTRUCTURE LIMITED & ORSRespondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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24.07.2024

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996, seeking intervention of the Court to appoint an Arbitrator to arbitrate on the disputes between the petitioner and the respondents.

2. During the course of these proceedings, Corporate Insolvency Resolution Process (CIRP) was initiated against Respondent 1 and a moratorium has been put in place by the National Company Law Tribunal, Bombay by order dated 1 February 2024.

3. In that view of the matter, the petitioner has moved IA 32413/2024 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for deletion of Respondent 1 from the array of parties.

4. Accordingly, IA 32413/2024, seeking deletion of Respondent 1 from the array of parties, is allowed.

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5. Ms. Mudrakshi, learned counsel for the petitioner, submits that, in terms of paras 4 and 5 of the judgment of the Supreme Court in *Alchemist Asset Reconstruction Co Ltd v. Hotel Gaudavan Pvt Ltd*¹, the institution or continuation of legal proceedings against a corporate debtor immediately ceases on a moratorium under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 coming into effect. In these circumstances, Ms. Mudrakshi, learned counsel submits that her client does not intend to institute arbitral proceedings against Respondent 1, *vis-a-vis* whom her client would avail appropriate remedies as are available in the law.

6. She, therefore, restricts this petition to appointment of an arbitrator to arbitrate on the disputes between the petitioner and Respondents 2 to 5.

7. Ms. Mudrakshi points out that Respondents 2 to 5 are guarantors against the loan which was advanced by the petitioner to Respondent 1. She submits that there are independent Deeds of Security between the petitioner and each of the said respondents. These Deeds of Security have been placed on record. Ms. Mudrakshi has taken me to one such Deed of Security, which contains the following clause, envisaging resolution of disputes between the parties by arbitration:

“27. All disputes under this Deed shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. There shall be a sole arbitrator to be appointed by RFL and the award thereupon shall be binding upon

¹ (2018) 16 SCC 94



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the Security Provider and RFL. The arbitration shall be held at such place as may be decided by RFL. Laws of India shall apply exclusively.”

8. Though Clause 27 contemplates arbitration by a Sole Arbitrator to be appointed by the petitioner, the Clause is obviously unworkable in view of the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd*².

9. In these circumstances, the petitioner addressed a joint notice under Section 21 of the 1996 Act to all the respondents, calling on them to liquidate the loans provided by the petitioner, failing which arbitral proceedings would be initiated.

10. None of the respondents have condescended to respond the notice, resulting in the filing of the present petition before the Court by the petitioner.

11. Though Respondents 2 to 5 have been duly served by speed post, courier and email, they have not appeared when the matter has been called out. It is seen that they were also not entering appearance before the learned Joint Registrar.

12. The existence of the arbitration clause in the Deeds of Security between the petitioner and each of the Respondents 2 to 5 cannot be disputed. The dispute between the petitioner and the said respondents is *prima facie* arbitrable. Even otherwise, given the position of law as

² (2020) 20 SCC 760



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recently enunciated in *SBI General Insurance Co Ltd v. Krish Spinning*³ this Court, exercising jurisdiction under Section 11(6) of the 1996 Act, is only required to satisfy itself regarding the existence of a valid arbitration clause and that the respondents are party to the said clause. Other issues have ideally to be decided by the Arbitral Tribunal.

13. The liabilities of Respondents 2 to 5 being joint and several and relatable to a common amount loaned by the petitioner to Respondent 1, the interests of justice would be facilitated if one arbitral Tribunal is appointed to deal with the disputes between the petitioner and all the Respondents 2 to 5.

14. As such, this court appoints Mr. Aniruddh Sharma, Advocate (Cell: 9999080715) as the Arbitrator to arbitrate on the disputes between the petitioner and Respondents 2 to 5. The learned Arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act. 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 the reference.

15. This petition stands disposed of in the aforesaid terms.

I.A. 10338/2024

16. This application seeks permission to effect substituted service on Respondents 2 to 5. As Respondents 2 to 5 have not turned up



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despite having been duly served by speed post, courier, and email, I do not see any necessity to effect substituted service on them.

17. Accordingly, the application is disposed of.

C.HARI SHANKAR, J

JULY 24, 2024

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Click here to check corrigendum, if any

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