



2024:DHC:5505



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

+ ARB.P. 227/2024

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr. Prashant Kaushik, Ms. Neha Gaur, Mr. Satish Kumar Pathak, Mr. Kaushal Kumar Sharma, Mr. Pankaj Saini and Mr. Raman Goyal, Advocates.

versus

JAI CHAMUNDA PETROLEUM & ORS

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

23.07.2024

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ARB.P. 227/2024

1. This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”) for reference of the disputes between the parties to arbitration.

2. The petitioner advanced a loan to the respondents under an Agreement dated 20 September 2021. Clause 12 of the Agreement envisages resolution of the disputes by arbitration, which reads thus:

“12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the



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Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other Party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years' relevant experience. The Respondent shall either:

- (i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ("Notice Period"); or
- (ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.

In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s."

3. The petitioner addressed a notice to the respondents under Section 21 of the 1996 Act on 8 January 2024, invoking arbitration. There was no response from the respondents, which has provoked the



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petitioner to approach this Court under Section 11(6) of the 1996 Act to appoint an arbitrator.

4. Despite service of notice, there is no appearance on behalf of the respondents. No reply to this petition has been filed either.

5. Accordingly, this Court proceeds to decide the matter after hearing learned Counsel for the petitioner and on the basis of record.

6. There is an arbitration agreement between the parties. The dispute between the parties is, *prima facie*, referable to arbitration. Nothing further is required to be seen by this Court in exercise of its jurisdiction under Section 11(6) of the 1996 Act in view of the recent decision of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*¹.

7. Accordingly, this Court appoints Mr. Yogesh Kumar Mahur, Advocate (Tel: 9810253685) as arbitrator to arbitrate on the disputes between the parties. The learned arbitrator shall be entitled to charge fees in accordance with Fourth Schedule to the 1996 Act, or as otherwise agreed with the parties.

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

¹ 2024 SCC OnLine SC 1754



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9. The petition is allowed in the aforesaid terms.

C.HARI SHANKAR, J

JULY 23, 2024/rb

Click here to check corrigendum, if any