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

+ **ARB.P. 347/2022**

ADITYA BIRLA FINANCE LIMITEDPetitioner

Through: Ms. Sandhya Chawla, Advocate
(through VC)

versus

MR. KOTTA SRINIVAS MANJUNATHRespondent

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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20.12.2024

1. The present petition under Section 11(4) and (5) of the Arbitration and Conciliation Act, 1996 ['Act of 1996'], has been filed by the Petitioner – Aditya Birla Finance Private Limited, seeking appointment of a Sole Arbitrator in terms of Clause 32.17 of the Facility Agreement dated 25.06.2020 ['Facility Agreement'] and arbitration clause of the Loan Agreement dated 06.02.2018 ['Loan Agreement'] executed between the parties.

2. It is stated that the Petitioner had sanctioned loan(s) to the Respondent for an amount of Rs. 50,00,000/- vide Loan Agreement and for an amount of Rs. 86,32,000/- vide Facility Agreement.

3. It is stated that the since the Respondent failed to make the repayments of loan amounts payable to the Petitioner, the Petitioner has invoked the arbitration clause vide notice dated 07.12.2021. It is stated that



by the said notice the Petitioner suggested the name of Sh. Shyam Bihari Sharma, (Retd.) Additional District & Session Judge as the Sole Arbitrator and called upon the Respondent to accord its consent for the same. However, the Respondent did not provide its consent for the appointment of the Sole Arbitrator and therefore, the Petitioner filed the present petition.

4. The Court has heard learned counsel for the Petitioner and perused the record.

5. The Arbitration clause of the Facility Agreement clearly stipulates that all claims or disputes arising out of the Agreement shall be resolved through Arbitration. The said Arbitration clause reads as under: -

“32.17 Arbitration

All claims or disputes arising out of or in relation to this agreement shall be settled by arbitration. the arbitral tribunal shall consist of a sole arbitrator to be appointed by the lender. All parties to this agreement hereby expressly consent to lender being the sole appointing authority. Any vacancy created in the arbitration tribunal for any reason whatsoever shall also be filled only by lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all the powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the facility provider changes or in the event of the law being made or amended so as to bring the facility provider under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act") to proceed to recover dues from the borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the facility provider cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the facility provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the facility provider exercises the option of terminating the mandate of arbitrator as the case may be. Provided



that neither a change in the legal status of the facility provider nor a change in law as referred to in this sub- paragraph above will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this agreement.”

(Emphasis Supplied)

6. Similarly, the Arbitration clause in the Loan agreement also provides that the unresolved disputes between the parties shall be referred to a Sole Arbitrator, appointed by the Petitioner.

7. The Order dated 12.07.2022, passed in these proceedings, records that the Respondent was served upon by email. Service by e-mail has been proved by affidavit of service dated 04.06.2022, filed by Petitioner’s counsel. In Order dated 04.11.2024, the learned Joint Registrar (J) has observed that the Respondent was also served through publication in the newspaper ‘Times of India’ on 23.02.2024. However, the Respondent has not entered appearance till date. Accordingly, Respondent’s right to file reply was closed vide on 04.11.2024.

8. The Respondent is accordingly deemed to be served.

9. Learned counsel for the Petitioner states that the claimed amount is Rs.97,54,980.32/- along with interest @ 14% per annum. She states that she has no objection if the arbitration is conducted under the aegis of the Delhi International Arbitration Centre (‘DIAC’).

10. In view of the law settled by the judgments of the Supreme Court in **TRF Limited v. Energo Engineering Projects Limited**¹ and **Perkins Eastman Architects DPC & Anr. V. HSCC (India) Limited**², and other judgments following them, the contractual provision for unilateral appointment of an arbitrator is impermissible. This Court is, therefore, of the

¹ (2017) 8 SCC 377

² (2020) 20 SCC 760



view that the Petitioner has made out a case for appointment of an arbitrator, and all rights and contentions of the parties on merits may be left open for adjudication by the learned Arbitrator.

11. The petition is, therefore, allowed and the parties are referred to arbitration.

12. Accordingly, the disputes between the parties under the said agreement are referred to the Arbitral Tribunal with the following directions:

a) Ms. Vibha Mahajan Seth, Senior Advocate (D/973/1998-R) (Mob. No. 9810702410; E-mail: vibhsmj@yahoo.com.sg) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

b) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

13. The arbitration will be held under the aegis of the DIAC and the arbitral proceedings will be governed by the Rules of DIAC. The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the Act of 1996, as amended by the DIAC Rules.

14. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

15. With the aforesaid directions, the petition stands disposed of.

16. The registry is directed to send a copy of this order to the Respondent through e-mail.

17. The matter will be listed before DIAC on 21.01.2025 at 04:30 P.M. DIAC is directed to issue fresh notice to the Respondent in the arbitral proceedings.



18. The registry is directed to send a copy of this order to DIAC and the Sole Arbitrator.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 20, 2024/mt/MG

Click here to check corrigendum, if any