



\$~1

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

+ **ARB.P. 359/2023**

TATA CAPITAL FINANCIAL SERVICES LIMITED..... Petitioner

Through: Mr. Savyasachi Sahai, Mr.
Vishwajeet Sing Shekhawat, Advs.

versus

SIMIT TECHNOLOGIES & ANR. Respondents

Through: Mr. Arindam Ghosh, Mr. Rohit
Dhuria, Advs. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

09.02.2024

%

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking the appointment of an Arbitrator for adjudication of disputes *inter se* the parties.
2. Learned counsel for the petitioner submits that Respondent No.1 is a sole proprietorship firm and Respondent No.2 is a sole proprietor of Respondent No. 1. The petitioner sanctioned a Channel Finance facility for a total amount of Rs.1,60,00,000/- in favour of the respondents. Prior to the sanction, the parties entered into the Channel Finance Agreement dated 18.06.2019, deed of hypothecation dated 18.06.2019, and net worth affidavit dated 19.06.2019.
3. Subsequently, upon the request of the respondent, the petitioner renewed the facility by the sanction letter dated 20.09.2020 and reduced the facility to Rs.75,00,000/-. Pursuant to this, the renewal letter dated 16.09.2020, loan-cum-guarantee agreement dated



21.09.2020, and net worth affidavit dated 24.09.2020 were executed. Respondents also executed a negative lien letter dated 23.10.2020 through which respondent No.1 and 2 created a negative lien over the property bearing House No. 3011, Ground Floor, Category LIG, Sector 70, Sahibzada Ajit Singh Nagar, Mohali Punjab. Further, the facility was extended vide extension letter dated 23.08.2021, and again the loan-cum-guarantee agreement and Renewal letter dated 25.08.2021 were executed. The facility was further extended vide sanction letter dated 07.10.2021 and loan-cum-guarantee agreement dated 13.10.2021 and renewal letter dated 13.10.2021 were executed. The facility was capped at Rs. 68,50,000/- vide capping letter dated 18.10.2021.

4. Learned counsel for the petitioner submits that the respondent did not make regular payments. However, a settlement was arrived between the parties vide a settlement letter dated 01.08.2022 vide which the respondents have to make the payment of Rs.70,00,000/- for clearance of all the outstanding amounts under the facility and closure of the loan amount. It has been submitted that out of the settled amount, the respondents paid an amount of Rs.35,51,080/-. The last payment received by the petitioner from respondents was of Rs.51,080/- on 15.10.2022. Since the respondent failed to make the payment in terms of the settlement agreement, the above-said settlement letter was revoked vide letter dated 17.01.2023. A loan recall notice dated 27.01.2023 was also issued.
5. Learned counsel submits that the respondents are jointly and severely liable to make a payment of Rs.49,27,022.10/- together with



applicable and additional interest w.e.f. 02.01.2023. Learned counsel has further submitted that though as per the arbitration clause, the parties were to nominate an arbitrator. However, in view of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited*** 2019 SCC OnLine SC 1517, the present petition has been filed. It has further been submitted that as per Clause -12 (arbitration clause), this Court has the jurisdiction. It has further been submitted that the arbitration clause has duly been invoked vide notice dated 27.01.2023. Learned counsel submits that though, the loan agreement and other documents and the arbitration clause have not been disputed, but as per instructions, it is submitted that the sum of Rs.37,00,000/- has already been paid. However, this question needs to be examined by the learned Arbitrator.

6. Learned counsel for the petitioner has also submitted that in virtue of the order of the NCLT, Mumbai, dated 24.11.2023 the name of the company has been changed from TATA CAPITAL FINANCIAL SERVICES LIMITED to TATA CAPITAL LIMITED.
7. Learned counsel for the petitioner submits that the application containing the amended memo of parties has been filed vide dairy no.318336/2024 on 06.02.2024.
8. The registry is directed to take on record the amended memo of parties.
9. Since there is an arbitration clause and an arbitrable disputes between the parties, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are



- referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, DIAC shall nominate an Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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.
- vi) The parties shall approach the learned arbitrator within two weeks from today.
6. The present petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 9, 2024

Pallavi