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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 375/2024

MONEYWISE FINANCIAL SERVICES PVT LTD Petitioner

Through: Mr. Mehvish Khan, Advocate.

versus

LALIT MINING IMPEX PVT LTD AND ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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21.05.2024

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Loan Agreement dated 02.11.2018 ('Loan Agreement').

2. Notice on this petition was issued on 18.03.2024.
3. Office report records that respondents Nos.1 to 4 have been served by the ordinary mode. The Process Server's report received from the office of the Civil Judge (Senior Division), Faridabad also records that the respondents have been served.
4. However, no one is present on behalf of the respondents when the matter is called-out; neither has any reply been filed on behalf of the respondents.
5. In view of the above, this court is satisfied that having been duly served in the matter, the respondents have chosen not to be



represented in the matter. The respondents are accordingly set *ex-parte*.

6. Mr. Mehvish Khan, learned counsel for the petitioner has drawn the attention of this court to clause 10.1 of the Loan Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration of a Sole Arbitrator to be appointed by the petitioner; with the ‘seat’ of arbitration being New Delhi.
7. Though the arbitration agreement contemplates that the Sole Arbitrator is to be appointed by petitioner, that portion of the arbitration clause is, in any case, untenable in law in view of the decision of the Supreme Court in ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd***¹.
8. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 9 of the Loan Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
9. As per the record, the petitioner invoked arbitration *vide* Notice dated 06.02.2024, to which the respondent has not sent any reply.
10. In the above circumstances, Mr. Khan submits, that this court may appoint a Sole Arbitrator; and then refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi (‘DIAC’), keeping all factual and legal contentions of the parties open.

¹ (2020) 20 SCC 760



11. Upon a conspectus of the averments contained in the petition, and the submissions made at the Bar, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 06.02.2024, do not appear *ex-facie* to be non-arbitrable.
12. Accordingly, the present petition is allowed and **Mr. Kotla Harshavardhan, Advocate (Cellphone No.: +91 9958400199)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
13. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the petitioner is given liberty to file an appropriate application in this court.
14. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
16. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.



17. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the petitioner.
18. The Registry is also directed to send a copy of this order by e-mail to the respondents at the e-mail IDs, if any, available on record.
19. The petition stands disposed-of in the above terms.
20. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 21, 2024

V.Rawat