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

+ O.M.P. (COMM) 158/2024 & I.A. 8158/2024

MKMG JEWEL DEVELOPERS PVT. LTD.

.....Petitioner

Through: Mr. Raghav Marwah, Adv.

versus

BLISS EQUITY PVT. LTD.

.....Respondent

Through: Mr. Naveen Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

09.07.2024

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1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside of the impugned Award dated 13.02.2024 passed by the learned Sole Arbitrator.
2. The brief facts are that on 14.01.2018, a Loan Agreement was executed between the petitioner and respondent. On 14.08.2019, Addendum Loan Agreement was executed between the parties herein.
3. The petitioner company was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 12.01.2022 passed by the NCLT, Delhi.
4. On 22.02.2022, the respondent filed its claim before the learned IRP for a sum of Rs. 19.21 crores approximately which was admitted by the IRP.



5. On 22.08.2023, Resolution Professional sent an email stating that the moratorium period under section 14 of Insolvency and Bankruptcy Code, 2016 was operational. However, on the same day at 8:27 PM, the Director of the respondent company invoked arbitration clause on the ground that moratorium was no longer operational. The said email was withdrawn subsequently by the Director of the respondent.
6. On 23.10.2023 *vide* its email, the respondent invoked the arbitration as the moratorium period was over and appointed the Sole Arbitrator.
7. Learned Sole Arbitrator entered the reference and passed the impugned Award which is under challenge in the present petition filed by the Resolution Professional.
8. Mr. Marwah, learned counsel for the petitioner states that the only ground on which the impugned Award is liable to be set aside is that the unilateral appointment made by the respondent is contrary to the law laid down by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd., (2020) 20 SCC 760*** and ***TRF Limited & Anr. vs. Damodar Valley Corporation & Anr., AIR 2017 SC 3889***.
9. Paragraphs 1 and 2 of the impugned Award dated 13.02.2024 read as under:-

“1. The present proceedings relates to the dispute arisen between the parties in relation to loan agreement dated 14.01.2018 and dated 14.08.2019 made between the claimant M/s Bliss Equity Private Limited and the Respondent, M/s MKMG Jewel Developers Pvt Ltd wherein the clause 7 of the said agreement provides for the dispute resolution mechanism,



Clause 7 specifically provides as hereunder: “In the event of any disputes, differences or claims arising between the parties in connection with this agreement or the construction, interpretation of any of the clauses hereof or anything does or omitted to be done pursuant hereto, the parties shall first endeavor to amicably settle such disputes, differences or claims, amongst themselves, failing which the same shall be referred to a sole arbitrator appointed by the second party. The arbitration proceedings shall be held at Delhi and be held in English Language and the arbitrator will be subject to the provisions of the Arbitration and Conciliation Act 1996. The award of the arbitrator shall be final and binding upon the parties”.

2. In view of clause 7 of loan agreement dated 14.01.2018 and dated 14.08.2019, the arbitration proceedings were invoked by the claimant vide communication dated 23.10.2023 wherein it was clarified by the claimant that earlier proceedings initiated by the Claimant were terminated in view of the moratorium in relation the Respondent Company which was undergoing CIRP as communicated by the Respondent and the current proceedings initiated afresh after completion of the CIRP period, accordingly the claimant in view of the clause 7 of the loan agreement appointed this tribunal as Sole Arbitrator to adjudicate the present dispute between the parties. The claimant informed this Tribunal of communication made with the Respondent in relation to invocation of present reference



vide its email dated 29.01.2023.”

10. A perusal of the above paras show that it was the respondent who had appointed the Sole Arbitrator. In the reply filed by the respondent, the email appointing the Sole Arbitrator has been filed which reads as under:-



bliss equity <blissequity1997@gmail.com>

In the matter of arbitration between M/s. Bliss Equity Private Limited (Claimant) and M/s. MKMG Jewel Developers Private Limited (Defendant)

1 message

bliss equity <blissequity1997@gmail.com>

Mon, Oct 23, 2023 at 1:26 PM

To: caddaip <cadda.ip@gmail.com>, Durga Das Agrawal <ip.mkmkg@gmail.com>

Cc: Smartnomics Advisors LLP <smartnomics@gmail.com>, bliss equity <blissequity1997@gmail.com>

23.10.2023

M/s MKMG Jewel Developers Private Limited
13/3, Second Floor, Shop No. 211, WEA, Karol Bagh
Delhi Central Delhi DL 110005 INEmail Id- ip.mkmkg@gmail.com

Also at : KBL Agarwal & Co, 413, Vikasdeep Building, Laxmi Nagar, District Centre New Delhi- 110092

Dear Sir (s),

In reference to your earlier submissions stating ongoing CIRP period in respect of M/s MKMG Jewel Developers Pvt Ltd, we had taken a step back and terminated our earlier proceedings. We had requested you to provide an order of Hon'ble Court / Tribunal in this respect as CIRP period is already ended long back and given you sufficient time to provide the same, now months have gone however no such order is placed on record.

In view of the current circumstances and legal provisions / precedents, We have no option but to proceed with the Arbitration Proceedings in this matter as per Arbitration and Conciliation Act 1996 (amended as on date).

Please find attached the notice for invoking arbitration under clause 7 of agreement executed between M/s. Bliss Equity Private Limited (Claimant) and M/s. MKMG Jewel Developers Private Limited (Defendant) dated 23.10.2023.

Please note that in view of the arbitration clause of the agreement, we are entitled to appoint a sole arbitrator, accordingly we have referred the matter to (Retd Civil Judge and CJM) Mr. Rajendra Singh, Mobile Number - 9414316925 Email id - rajendra1166@gmail.com as the sole arbitration tribunal and filed appropriate proceedings in this regard, which please note.

Kindly treat this notice in compliance to the provisions of Arbitration and Conciliation Act 1996 (amended as on date).

You may contact the aforesaid arbitrator for further proceedings in this regard, you can make your submission to the sole arbitration tribunal for its decision / order in accordance with law. The profile of the aforesaid arbitrator is attached for your reference.

For M/s Bliss Equity Private Limited

Rahul Garg

4 attachments

**CERTIFIED
TRUE COPY**

For BLISS EQUITY PVT. LTD.

Director/Auth. Signatory



11. A perusal of the said email shows that the appointment of the Sole Arbitrator has been done by Mr. Rahul Garg, Director of the respondent company.
12. As noted above, in the present case, the Sole Arbitrator has been appointed by the Director of the respondent company and the same is contrary to the various judgments of the Hon'ble Supreme Court. The relevant paras of *Perkins Eastman Architects DPC (supra)* reads as under:-

“21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive



by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]”

13. In view of the settled law, the appointment of the learned Sole Arbitrator by the respondent is barred under Section 12(5) read with Seventh Schedule of the Arbitration and Conciliation Act, 1996. Therefore, the whole arbitration proceedings are non-est in law.
14. For the said reasons, the petition is allowed and the award dated 13.02.2024 is hereby set aside.
15. Pending applications are also disposed of.

JULY 9, 2024 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any