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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 531/2024

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr Savyasachi Sahai, Mr Vishwajeet
Singh Shekhawat and Mr Aman
Singhania, Advs.

versus

M/S I M TRADERS AND ORS.

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

18.07.2024

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator.
2. Respondent No 1 being the borrower is a partnership firm and respondent Nos. 2 and 3 are its guarantors and partners.
3. Respondent No.1 approached the petitioner for financial assistance under the scheme of Channel Finance Facility and executed a Channel Finance Agreement dated 27.03.2018 for Rs. 28 lakhs. In addition, respondent No.2 and respondent No.3 executed a letter of guarantee dated 27.03.2018. Thereafter, on request of the respondent No.1 the Facility was renewed vide Loan cum Guarantee Agreement dated 04.07.2019.
4. Relying on the said documents, the petitioner sanctioned the loan of Rs. 40 lakhs to the respondents. The amount was subsequently revised and raised to Rs. 60 lakhs vide Loan cum Guarantee Agreement dated



22.09.2021.

5. Thereafter, the respondents after making some payments started defaulting in the payments of instalments and hence, the Loan Recall Notice and notice invoking arbitration was issued on 05.03.2024 in terms of Clause 12 of Loan-cum-Guarantee Agreement dated 22.09.2021 read with Master Terms Condition.

6. The arbitration clause reads as under:

“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 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 the 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 Conciliations Act, 1996, together with its amendments, any statutory modifications or re-enactment thereof or the time being in force. The arbitration proceedings 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 Obligors.”

7. Since the amounts were not being paid, the petitioner filed the present petition.
8. Notice was issued and as per service report, the respondents have been served at “imtraders05@gmail.com”. The same is the e-mail id of the respondent in the loan application form dated 03.08.2020.
9. Despite service there is no appearance on behalf of the respondents in the first call or in the second call.
10. Respondent No.1 is the partnership firm, respondent No.2 are partners



and guarantors and hence bound by the arbitration clause.

11. For the said reasons, the petition is allowed.

12. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Harshit Agarwal (Mob. No. 9811026362) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

13. The petition is allowed and disposed of in the aforesaid terms.

14. The affidavit of service handed over in Court today is taken on record.

JASMEET SINGH, J

JULY 18, 2024

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[Click here to check corrigendum, if any](#)