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

+ ARB.P. 554/2024

M/S INDOSTAR CAPITAL FINANCE LIMITED Petitioner
Through: Mr. Deepankur Sondhi, Ms.
Shivani Aggarwal, Advocates.

versus

G.S. ATWAL AND CO. & ANR. Respondents
Through: Mr. Sudhir K. Makkar, Sr.
Advocate with Ms. Saumya Gupta,
Ms. Aadhya S., Mr. Yashovardhan
Suri, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.05.2024

I.A. 9781/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”] for appointment of an arbitrator to adjudicate disputes between the parties under 27 Loan cum Hypothecation Agreements all dated 30.11.2021 [“the Agreements”].
2. Under the Agreements in question, the petitioner financed the purchase of vehicles by the respondents and the vehicles were hypothecated to the petitioner as security. The agreements contained an arbitration clause [Clause 37] which provides for arbitration in Chennai.

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Clause 38 provides for jurisdiction for Courts in Delhi.

3. This is the second round of proposed arbitration. In the first round, the petitioner invoked arbitration by notices dated 03.11.2022. 27 arbitration proceedings were held, which culminated in separate awards, all dated 05.01.2023. The said awards have been set aside by the Commercial Court, Saket by orders dated 12.02.2024, on the ground that the appointment of the arbitrator was unilaterally made by the petitioner and the awards are, therefore, hit by Section 12 of the Act read with the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC vs. HSCC (India) Limited* [(2020) 20 SCC 760].

4. It is in these circumstances that the petitioner has approached this Court for relief.

5. Although Mr. Sudhir K. Makkar, learned Senior Counsel for the respondents, had originally taken an objection as to the territorial jurisdiction of this Court to entertain this petition, as also with regard to the maintainability of a single petition in respect of 27 different contracts, he has taken instructions and submits that the respondents are agreeable to a reference to mediation, failing which the disputes may be adjudicated by an independent arbitrator.

6. Learned counsel for the petitioner is also agreeable to such a course.

7. In view of the above, and with the consent of learned counsel for the parties, the petition is disposed of with the following directions:

A. The disputes between the parties are referred to *Samadhan*,
Delhi High Court Mediation and Conciliation Centre,



Shershah Road, New Delhi-110503. The parties are directed to appear before the learned mediator on 15.05.2024.

- B. In the event, the parties are unable to settle their disputes in mediation, the disputes are referred to the arbitration of Hon'ble Ms. Justice Gita Mittal, former Chief Justice, High Court of Jammu & Kashmir, and Ladakh [Tel: 9818000220].
- C. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 ["DIAC"] and will be governed by DIAC Rules, including as to the remuneration of the learned Arbitrator.
- D. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- E. DIAC is requested to defer the reference until 31.07.2024 in order to enable the parties to settle their disputes in mediation. After the said date, DIAC will enter into the reference at the request of either party. However, if the parties jointly request DIAC for a further deferment, DIAC may accept the request. Conversely, if the mediation proceedings have been closed unsuccessfully prior to 31.07.2024, either party may approach DIAC to enter into the reference forthwith.

8. The aforesaid order has been passed with the consent of learned counsel for the parties and does not preclude any arguments of the parties, including with regard to jurisdiction of the Chennai Courts, if necessary, at a subsequent stage.



9. All contentions are left open for consideration by the learned Arbitrator. It is made clear that this Court has not entered into the merits of the matter.

10. The petition is disposed of in terms of the above.

PRATEEK JALAN, J

MAY 7, 2024
“*Bhupi*”/