



\$~2

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

+ **ARB.P. 659/2023**

TATA CAPITAL FINANCIAL SERVICE LIMITED

..... Petitioner

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

versus

M/S AASTHA INTERNATIONAL & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

06.02.2024

%

ARB.P. 659/2023

1. By way of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the petitioner was filed through its authorised representative Mr. Gaurav Mishra, General Manager. The petitioner is a non-banking financial Company, duly registered with the Reserved Bank of India.
3. It has been submitted that the petitioner company advanced the working capital demand loan to Respondent No. 1 firm M/s Aastha International & Ors. through its partners, Respondent Nos. 2 and 3 vide



sanction letter dated 13.06.2017 for a total sum of Rupees Three Crores.

4. Respondent Nos. 2 to 5 also executed a letter of guarantee dated 29.06.2017.
5. The petitioner issued a demand promissory note dated 28.06.2017. Letter of undertaking cum indemnity dated 29.06.2017 was executed by Respondent No.1 through Respondent Nos. 2 and 3 in favour of the petitioner.
6. Learned counsel submits that Respondent Nos. 2 to 6 also signed the loan agreement which contains the arbitration clause. However, learned counsel submits that the respondents defaulted in the payment of the loan amount and the dispute arose.
7. Learned counsel submits that the arbitration was duly invoked vide notice dated 22.07.2020. However, the respondents did not respond.
8. Learned counsel submits that in the court also the notices were issued to the respondents. It has been submitted that respondents have duly been served through email on the email ID given in the loan agreement.
9. Learned counsel further submits that the affidavit of service has already been filed. Learned counsel submits that there is no other address available with the petitioner of the respondents. Learned counsel submits that the present petition has been pending for more than six months and it has been submitted that respondents are intentionally avoiding.
10. The prayer has been made for the appointment of an independent arbitrator. Learned counsel submits that the claim amount is Rs. 1,08,40,922/-.



11. In view of the above, 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, Justice P. S. Teji, (Retd.) shall be nominated as 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 claim, 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.

I.A. 2949/2024

12. During the course of submissions, learned counsel submits that he has also moved an application under Order 22 Rule 10 read with section 151 CPC for seeking of change of name of the petitioner.
13. Learned counsel submits that this has been instituted pursuant to the



order of NCLT, Mumbai Bench, C-4 dated 24.11.2023.

14. Learned counsel submits that in view of the order of NCLT by the scheme of amalgamation, the petitioner has become Tata Capital Limited. In view of the submissions made the application is allowed.
15. Learned counsel submits that the amended memo of parties has already been filed.
16. In view of the above, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 6, 2024/AR..