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

+ ARB.P. 569/2024

TATA CAPITAL LIMITED (TRANSFEEE OF TATA
CAPITAL FINANCIAL SERVICES LTD.)Petitioner

versus

M/S. GOUTAM AND COMPANYRespondent

+ ARB.P. 611/2024

TATA CAPITAL LIMITED (TRANSFEEE OF TATA
CAPITAL FINANCIAL SERVICES LTD.)Petitioner

versus

M/S. GOUTAM AND COMPANY & ORS.Respondents

Appearances:

Mr. Sanidhya Sonthalia, Advocate for petitioner.

Mr. Mithilesh Kumar Pandey, Advocate for respondent.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **26.07.2024**

1. The petitioner has filed these two petitions under Section 11 of the Arbitration and Conciliation, Act, 1996 [“the Act”] seeking appointment of an arbitrator to adjudicate upon the disputes under two Loan Agreements – dated 10.08.2020 [in ARB.P. 569/2024], and 21.09.2018 read (with Restructuring Agreement dated 10.11.2020) [in ARB.P. 611/2024].

2. As the petitioner is common to both of the petitions, as is the principal borrower, both petitions have been taken up for hearing together.

3. There are two other respondents in ARB.P. 611/2024, who are



signatories to the agreement dated 21.09.2018, as guarantors.

4. All the agreements in question contain arbitration clauses – Clause 12 in the agreement dated 10.08.2020 and Clause 23 in the agreement dated 21.09.2018. The Restructuring Agreement dated 10.11.2020 also *inter alia* provides that the arbitration clause contained in the agreement dated 21.09.2018 would apply *mutatis mutandis* to the Restructuring Agreement.

5. Disputes having arisen between the parties, the petitioner invoked arbitration by separate communications dated 19.03.2024. As these communications failed to elicit a response, the petitioner approached the Court for appointment of an arbitrator.

6. Mr. Mithilesh Kumar Pandey, learned counsel, appears on behalf of the respondents. He does not dispute the existence of the arbitration clauses in the agreements in question, but submits that the petitioner's claims are barred by limitation. He also disputes the petitioner's claims on merits.

7. At the stage of proceedings under Section 11 of the Act, the Court is only required to examine *prima facie* as to whether an arbitration agreement exists between the parties. Grounds of arbitrability, including limitation, are best left to the jurisdiction of the arbitral tribunal. The recent judgment of the Supreme Court in *SBI General Insurance Co. Ltd. vs. Krish Spinning* [Civil Appeal No. 7822/2024, decided on 18.07.2024, makes it clear that pre-referral scrutiny does not encompass laborious enquiries into such factual aspects.

8. I am, therefore, of the view that, the arbitration clause being undisputed, the appropriate course is to refer the parties to arbitration,



leaving all rights and contentions whether on maintainability, limitation or on merits open for adjudication by the learned arbitrator.

9. In view of the aforesaid reasons, the petitions are allowed and the disputes between the parties under the agreements 10.08.2020 [ARB.P. 569/2024] and 21.09.2018 read with Restructuring Agreement dated 10.11.2020 [in ARB.P. 611/2024], are referred to arbitration of Mr. Sonal Kumar Singh, Advocate [Tel:+91-9958555776].

10. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

12. Both the arbitrations will be considered as independent arbitrations for all purposes, but it is open to the learned Arbitrator to hold joint hearings or make other such procedural directions as may be necessary after hearing the parties.

13. All rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

14. The petitions stand disposed of with the aforesaid observations.

PRATEEK JALAN, J

JULY 26, 2024
"Bhupi"/