



2024:DHC:9744



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 16.12.2024

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ARB.P. 654/2024**TATA CAPITAL LIMITED**

.....Petitioner

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

versus

M/S SIRAJ TOOLS INDUSTRIES & ANR.

.....Respondents

Through: Mr. Anuj Kumar, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an agreement/s between the parties whereby certain loan facilities were availed by the respondent from the predecessor-in-interest of the petitioner. The same culminated in a loan-cum-guarantee agreement dated 25.02.2021 followed by a loan-cum-guarantee agreement dated 18.09.2021 and a loan-cum-guarantee agreement dated 07.10.2022.
3. Successive loan agreements were executed pursuant to sanction letters issued by the petitioner. By way of the present petition, the petitioner seeks



invocation of the arbitration agreement contained in the loan-cum-agreement dated 07.10.2022. The respondent no.1 is the borrower in terms of that agreement whereas the respondent no.2 is the guarantor.

4. The said agreement contains an arbitration clause which 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 arbitration 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 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 convey 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 Conciliation Act, 1996 together with its amendments, any statutory



modifications or re-enactment thereof for the time being in force. The arbitration proceeding 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 Obligor/s.”

5. Learned counsel for the respondents enters appearance. While strongly refuting the demands and claims sought to be raised by the petitioner upon the respondents, he does not dispute the existence of an arbitration agreement between the parties. He accedes to the appointment of an independent sole arbitrator to adjudicate the disputes between the parties.

6. In the circumstances, as there is no controversy about the existence of the arbitration agreement, there is no impediment to constituting an arbitral tribunal to adjudicate the disputes between the parties, as mandated in terms of the judgment of the Supreme Court in ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532.

7. Furthermore, in terms of the judgment in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

8. Accordingly, Ms. Prity Sharma, Advocate (Mob. No.: +91 9911028589) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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9. The respondents shall be entitled to raise objections, if any, as regards arbitrability/jurisdiction, which shall be duly considered and adjudicated by the learned sole arbitrator, in accordance with law.
10. The respondents shall be at liberty to raise counter-claims, if any, in the arbitral proceedings, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.
11. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.
12. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).
13. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.
14. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 16, 2024/at