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

+ **ARB.P. 767/2024**

**TATA CAPITAL LIMITED (TRANSFEREE OF TATA CAPITAL
FINANCIAL SERVICES LTD.)**Petitioner

Through: **Ms. Ekta Bhasin, Mr. Sanidhya
Sonthalia, Advs.**

versus

M/S JERATH PATH LABS & ORS.Respondents

Through:

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

ORDER

04.09.2024

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1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The facts are that the respondent No. 1 is the proprietorship concern of Mr. Prashant Jerath, Respondent No. 2 and had approached the petitioner for financial assistance. Petitioner sanctioned a loan amount of Rs 5,89,00,000/- *vide* its sanction letter dated 09.10.2023.
3. In terms of the Sanction letter dated 09.10.2023, the parties executed a Master Lease Agreement (“MLA”) and a Letter of Guarantee on 10.10.2023.
4. Respondent Nos. 2 and 3 also in their individual capacity stood as guarantors for the loan facility availed by respondent No. 1.
5. Thereafter, Respondent No. 2 on behalf of Respondent No. 1



requested the petitioner to disburse the sanctioned loan facility in favour M/S Kumar Healthcare for supply of medical equipments in order to run a Path Lab.

6. Since there were disputes between the parties, the petitioner issued legal notice for termination of MLA on 29.04.2024 and also invoked arbitration *vide* legal notice dated 29.04.2024.

7. The arbitration clause is contained as Clause 21.4 in the MLA which reads as under:

"21.4. ARBITRATION

If any dispute, difference or claim arises between any of the Obligors and the Lessor in connection with the Agreement or as to the interpretation, validity, implementation or effect of the Agreement or alleged breach of the terms of this Agreement or anything done or omitted to be done pursuant to the Agreement, the same shall be settled by arbitration to be held at place as set out in the Master Lease Summary Schedule in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed as per the procedure below:

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 often (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 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 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."

8. The Letter of Guarantee dated 10.10.2023 also contains an arbitration clause being Clause 32 which reads as under:

“32. ARBITRATION If any dispute, difference or claim arises between any of the Guarantor Is and TCFSL in connection with the Lease Assets under Lease Agreement or as to the interpretation, validity, implementation or effect of the Lease Agreement and I or the Letter of Guarantee or as to the rights and liabilities or alleged breach of the



Lease Agreement and/or the Letter of Guarantee or anything done or omitted to be done pursuant to the Lease Agreement, the same shall be settled by arbitration to be held in the place to be held at the place as mentioned at Item No.7. of the First Schedule hereto in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed as per the procedure below :

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 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 Conciliation Act. 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. The cost of arbitration shall be borne by the Lessee and Guarantors."



9. Notice in the present petition was issued on 27.05.2024 and as per the affidavit of service filed on behalf of the petitioner, respondent Nos. 1 and 3 had been served through speed post and courier, however, the notice sent through speed post was refused by respondent Nos. 1 and 3.

10. For the said reasons, respondent Nos. 1 and 3 stand served. Respondent No. 2 is the sole proprietor of respondent No. 1 and since respondent No. 1 stands served (in view of refusal), respondent No. 2 is also deemed to be served. Learned counsel for the petitioner states that a sole Arbitrator be appointed by the court.

11. Despite service, there is nobody present on behalf of the respondent.

12. For the said reasons, I am inclined to allow the present petition.

13. The petition is allowed and disposed of with the following directions:

- i) Mr. Justice Najmi Waziri, (Retd.) (Mob. No. 9810097311) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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 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 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.

JASMEET SINGH, J

SEPTEMBER 4, 2024/DM

Click here to check corrigendum, if any