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

+ **ARB.P. 776/2024**

TATA CAPITAL LIMITED

.....Petitioner

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

Versus

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 for adjudication of disputes between the parties.
2. The facts are that Respondent No. 1 is the proprietorship concern of respondent No. 2 i.e. Mr. Prashant Jerath. Respondent No. 2 approached the petitioner. In this regard, petitioner sanctioned a Term Loan Facility for an amount of Rs. 4,00,00,000/- vide its sanction letter dated 09.10.2023.
3. In terms of the Sanction letter dated 09.10.2023, an Agreement for Term Loan was executed between the parties on 10.10.2023 wherein Respondent Nos. 2 and 3 stood as guarantors.
4. Since, the respondent defaulted in repayment of the loan amount, the petitioner issued a loan recall notice and invoked arbitration under Clause 13 of the Agreement for Term Loan..



5. The arbitration clause is contained as Clause 13 of the Term Loan Agreement which reads as under:

“13. 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 arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 18 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 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 Obligors.”

6. Notice in the present petition was issued on 28.05.2024 and as per affidavit of service, all the respondents have refused to accept the notice.

7. In view of the refusal on behalf of the respondents, the respondents are served.

8. Despite service, there is nobody appearing on behalf of the respondents.

9. For the said reasons, the petition is allowed and disposed of in the following terms:

- 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