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

+ **ARB.P. 802/2024**

HERO FINCORP LIMITED

.....Petitioner

Through: Mr. Arun Aggarwal, Adv. with Mr.
Shivam Saini, Mr. Praful Rawat,
Advs.

versus

GUPTA POWER INFRASTRUCTURE LIMITED AND ORS

.....Respondent

Through: Mr. Animesh Kumar, Mr. Nishant
Kumar, Mr. Tanay Agarwal, Mr.
Rohit Bhattacharjee, Dr. Sumit
Kumar, Mr. Aparajita, Mr. Ayush
kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

22.08.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the sole Arbitrator to adjudicate the disputes between the parties arising out of Facility Agreement dated 23.02.2023.
2. Pursuant to the said agreement, the petitioner extended credit facility to the respondent.
3. The arbitration clause is clause 20 of the Facility Agreement which reads as under:-

“20. Dispute Resolution

20.1 All disputes, claims, controversy or difference or questions



between the Parties arising out of or relating to the Facility Documents (including a dispute relating to the validity or existence of any Facility Documents) shall be referred to arbitration by a sole arbitrator appointed by HFCL. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, including the statutory amendments thereof. The venue, place and the seat of arbitration shall be New Delhi and the language of the arbitration shall be English. The award including interim award(s) of the arbitral tribunal shall be final, conclusive and binding on all the parties concerned. The arbitral tribunal may, from time to time, lay down the procedure to be followed in conducting the arbitration proceedings and shall conduct the arbitration proceedings in such manner as it considers appropriate.

20.2 Nothing contained herein shall be construed as extinguishing, limiting or ousting HFCL's rights under the DRT Act, Insolvency and Bankruptcy Code, 2016 and/or SARFAESI, if any in connection with recovery of Facility Obligations due under this Facility Agreement and the Facility Documents.

20.3 It is clarified that HFCL shall, at its discretion, be entitled to consolidate and combine any arbitral or legal proceedings initiated or proposed to be initiated under the Facility Documents with any arbitral or any other legal proceeding initiated or proposed to be initiated under one or more of the other Facility Documents."

4. Since the respondent failed to comply with its obligations, the petitioner invoked arbitration *vide* Legal Notice dated 10.04.2024.
5. Mr. Kumar, learned counsel for the respondent states that without prejudice to his right and contentions, the Arbitrator may be appointed.
6. For the said reasons, the petition is allowed. Since the parties are still



having disputes between them, the following directions are issued:-

- i) Mr. Sanjay Jain, Sr. Adv. (Mob. No. 9810076012) 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/counter-claims and 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.
7. With these directions, the petition is disposed of.
8. It is clarified that the order passed today is only for the purpose of deciding this petition and the Arbitrator will be uninfluenced by any observation made herein.

JASMEET SINGH, J

AUGUST 22, 2024/NG