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

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Date of Decision : 26.09.2024+ **ARB.P. 891/2024**

TATA CAPITAL LTD

.....Petitioner

Through: Mr. Harsh Sinha, Adv.

versus

UNITECH ASSOCIATES & ANR.

.....Respondents

Through: Mr. Ranvir Vats, Adv.

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

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '**the A&C Act**') seeks appointment of the Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of Loan Cum Hypothecation Agreement for Construction Equipment Finance dated 29.06.2021 (hereinafter '**the agreement**').
3. Pursuant to the said agreement the petitioner sanctioned and disbursed a loan to the respondent no. 1, with the respondent no. 2 being a guarantor.
4. Clause-3 of the agreement provides that the borrower shall repay the loan facility with accrued interest as mentioned in Annexure 1 thereto. The details of the hypothecated assets are set out in Annexure-2 of the agreement.
5. Dispute/s have arisen between the parties on account of alleged default on the part of the respondent in paying the instalments.



6. The agreement between the parties contained an Arbitration Clause 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.13(a) 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 appointment of the sole arbitrator shall be referred to the Council for National and International Commercial Arbitration (CNICA) and the arbitrator shall be appointed by them from their panel of arbitrators.

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.”

7. Admittedly, the seat of the Arbitration is in Delhi.

8. Disputes having arisen between the parties, a loan recall notice dated 27.06.2023 was issued by the petitioner to the respondent followed by a



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notice of invocation of arbitration dated 03.04.2024.

9. Respective counsels for the parties accede that in terms of the judgment of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760*, it is incumbent on this Court to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

10. It is further jointly requested that prior to adjudication of the disputes, the concerned arbitrator be also requested to pursue the possibility of a settlement of disputes between the parties through mediation as contemplated in Section 30 (1) of the A&C Act.

11. Accordingly, as jointly prayed, Mr. Pradeep Kumar, Advocate (Mob. No.:9810243924) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. Prior to adjudication of the dispute on merits, the learned Sole Arbitrator is requested to encourage the parties to arrive at a settlement through the mediation or any procedure as may be considered appropriate by the learned Arbitrator, as contemplated under Section 30(1) of the A&C Act.

13. The learned Sole Arbitrator may proceed with the arbitration subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

14. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

15. Parties shall share the arbitrator's fee and arbitral cost, equally.

16. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.



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17. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

18. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

SEPTEMBER 26, 2024/uk