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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 981/2023

M/S LEASE PLAN INDIA PRIVATE LIMITED Petitioner

Through: Mr. Akhilesh Pradhan, Advocate *via*
video-conferencing.

versus

M/S NIMBUS MOTORS PRIVATE LIMITED Respondent

Through: Mr. Vinayak Uniyal, Proxy Counsel
for Mr. Ashim Vachher, Advocate for
respondent.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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03.05.2024

Though mediation report is still awaited, learned counsel appearing for the parties submit, that the mediation proceedings have ended as 'Not-Settled'.

2. By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Lease Agreement bearing No. SME 300162 which was signed and executed between the parties in the month of August, 2018 ('Agreement').
3. Issue notice.
4. Learned counsel, as above, appearing on behalf of the respondent accepts notice; and fairly submits that a Sole Arbitrator may be appointed in the matter.
5. For sake of completeness, Mr. Akhilesh Pradhan, learned counsel for the petitioner has drawn the attention of this court to clause 10.2(I) of



the Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the ‘place’ of arbitration being at Delhi.

6. It may also be recorded that a separate territorial jurisdiction provision is contained in 10.2(II) of the Agreement, which again subjects the contract between the parties to the jurisdiction of competent courts at New Delhi.
7. Though the arbitration agreement also contemplates that a sole arbitrator is to be appointed by M/s. Lease Plan India Private Limited (LPIN), that provision of the arbitration agreement is, in any case, untenable in law in view of the decision of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***¹
8. As per the record, the petitioner invoked arbitration *vide* Notice dated 31.12.2022; to which no reply was sent by the respondent.
9. Upon a conspectus of the averments contained in the petition and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 31.12.2022, do not appear *ex-facie* to be non-arbitrable.
10. At this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; and then refer the matter for

¹ (2020) 20 SCC 760



arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all their respective factual and legal contentions open.

11. Accordingly, the present petition is allowed and **Mr. Jawahar Raja, Advocate (Cellphone No.: +91 9810639608)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
12. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
13. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
14. 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 merits, in accordance with law.
15. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
16. The petition stands disposed-of in the above terms.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 3, 2024/V.Rawat