



2024:DHC:6157



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

+ **ARB.P. 941/2024**

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr. Savyasachi K. Sahai, Mr.
Vishwajeet Singh Shekhar and Mr. Aman
Singhania, Advocates
versus

SV INDUSTRIES & ORS.

.....Respondents

Through: Mr. Amit Kumar, Adv. for R3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

12.08.2024

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹ for referring the disputes between the parties to arbitration.

2. There are three respondents. Respondents 2 and 3 were partners of the Respondent 1 firm. The dispute arose in the context of a Master Lease Agreement² dated 7 September 2022 to which the petitioner and respondents are all signatories, although Respondents 2 and 3 have signed the contract as partners of Respondent 1.

3. Mr Savyasachi K Sahai, learned Counsel for the petitioner, submits that there is an associated Letter of Guarantee of the same date i.e. 7 September 2022, which has also been signed by the

¹ "the 1996 Act" hereinafter

² "MLA" hereinafter

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Page 1 of 4

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Signing Date: 16.08.2024
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2024:DHC:6157



petitioner as well as by the respondents and also envisages arbitration in terms of Clause 21.4 of the MLA, which read thus:

“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 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 Obligor/s.”

4.

The dispute between the parties having arisen in the context of

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Page 2 of 4

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Signing Date: 16.08.2024
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2024:DHC:6157



the MLA, the petitioner by letter dated 16 May 2024, invoked the arbitration clause in the MLA and the Letter of Guarantee and called upon the respondents to agree to refer the disputes to arbitration.

5. Of the respondents, only Respondent 3 replied to the said notice, denying existence of any arbitration clause between her and the petitioner.

6. As matters thus reached an impasse, the petitioner has approached this Court by means of the present petition under Section 11(6) of the 1996 Act for appointment of an Arbitrator to arbitrate on the disputes between the parties.

7. Mr. Amit Kumar, learned counsel appears on behalf of Respondent 3. Respondents 1 and 2 are unrepresented despite service.

8. None of the respondents have filed any reply to the present petition.

9. Mr. Amit Kumar, learned counsel for Respondent 3, however, submits that while he has no objection to the disputes being referred to arbitration, the arbitration may be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and that all questions of fact and law, including the question of whether the signatures of Respondent 3 on the MLA and the Letter of Guarantee are genuine or forged, may be left open to be decided by the Arbitral Tribunal.

10. As there is an arbitration agreement between the parties, subject

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Page 3 of 4

Signature Not Verified

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Signing Date: 16.08.2024
14:02:47



2024:DHC:6157



to the decision of the Arbitrator on the disputes regarding the signature of Respondent 3 on the contract documents, this Court has in view of the recent decision of the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning***³, necessarily to refer the disputes to arbitration.

11. The disputes are stated to be region of ₹ 62 Lakhs.

12. Accordingly, this Court appoints Ms. Anju Gupta, Adv. (Mob: 9811582955) as the arbitrator, to arbitrate on the disputes between the parties.

13. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations.

14. The learned arbitrator shall be entitled to fees as per schedule of fees maintained by the DIAC.

15. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

16. The petition stands allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

AUGUST 12, 2024/yg

Click here to check corrigendum, if any