



2024:DHC:8937



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.11.2024

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ARB.P. 970/2024**CARS 24 FINANCIAL SERVICES PRIVATE LIMITED...Petitioner****Through: Mr. Rit Arora and Mr. Anurag Arora,
Advvs.****versus****JATIN WALIA & ANR.****.....Respondents****Through: None.****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 referred as 'A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of a Credit Facility Agreement dated 11.11.2019 entered into between the petitioner and the respondents, in terms of which the respondent no.1 is the borrower, whereas the respondent no.2 is the co-borrower.

3. Disputes have arisen between the parties on account of alleged default on the part of the respondents in paying the tranches/instalments under the aforesaid agreement.

4. The agreement between the parties contain an arbitration clause as under-

"15.2. Arbitration: Any dispute under this Agreement shall be settled by binding arbitration conducted in English with the seat of arbitration in New Delhi before a single arbitrator appointed by Lender at its sole



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discretion, as per the Arbitration and Conciliation Act, 1996.”

6. Disputes having arisen between the parties, a “Credit Facility Recall Notice Cum-Proposal for Appointment of Arbitrator” dated 05.02.2024 was issued by the petitioner for invoking arbitration, however the respondents failed to respond to the same.

7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

8. In the present proceedings, notice was issued by the Court on 09.07.2024. However, since none appeared on behalf of the respondent, a fresh notice was issued by the Court on 25.09.2024. Consequently, the petitioner has again taken the requisite steps to serve the respondents at its known address/es. The communications sent to the said address/es *via* speed post were returned with the notations, “Item Returned Addressee left without instructions.” In addition, the respondents have also been served *via* email at jatin.walia30@gmail.com.

9. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made attempts to effect service on the respondents at the last known address/es of the respondents and has thereby discharged its onus to effect service on the respondents.

10. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

11. Since the existence of the arbitration clause is evident from a perusal



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of the Credit Facility Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for and as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited* 2019SCC OnLine SC 547 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.

12. Accordingly, Ms. Akriti Arora, Advocate (Mob.: +91 9653270258) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The learned Sole Arbitrator may proceed with the arbitration proceedings 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 IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

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

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

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

NOVEMBER 19, 2024/gm

SACHIN DATTA, J