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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 28.10.2024**+ **ARB.P. 1009/2024**TATA CAPITAL LIMITED
(TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES LTD.)

.....Petitioner

Through: Ms. Ekta Bhasin and Mr. Sanidhya
Sonthalia, Advocates.

versus

M/S R. K. AUTOMOBILES

.....Respondent

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 '*the 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 Term Loan Agreement dated 12.04.2021 sanctioned under the Guaranteed Emergency Credit Line (GECL), against which a Deed of Hypothecation on 13.09.2021 was executed in favour of the petitioner, in terms of which, by way of hypothecation a second charge was extended to the respondent's present and future stocks which are funded by the petitioner.
3. Dispute/s have arisen between the parties on account of alleged default on the part of the respondents in paying the requisite instalments. The respondent failed to make the payment despite being granted opportunities to clear the outstanding dues.



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4. The arbitration clause in the Agreement between the parties, is in the following terms: -

“12 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 the Facility Documents 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 to be held at the place as mentioned at Serial No. 18 of Annexure 1 hereto, 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 by the Lender**. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be English language. Cost of arbitration shall be borne by the Obligors.*

13. JURISDICTION

Subject to Clause 13 above, the Parties hereto agree that all disputes arising out of and/ or in relation to this Agreement, shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No. 19 of Annexure 1 hereto. The Lender may, however, in its absolute discretion commence any legal action or proceedings arising out of this Agreement in any other court, tribunal or other appropriate forum and the Obligors hereby consents to that jurisdiction. "

5. It is apparent from a perusal of Annexure-1 of the Agreement that the seat of arbitration is Delhi.
6. Disputes having arisen between the parties, a loan recall/termination notice dated 17.05.2024 was issued by the petitioner to invoke arbitration and to call upon the respondent to make the payment of the outstanding amount. However, it is submitted by the petitioner that the respondent failed to respond to the same.
7. In the above circumstances, the petitioner has approached this Court,



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through the present petition, seeking the appointment of a Sole arbitrator to adjudicate the dispute.

8. In the present proceedings, notice was issued by the Court on 12.07.2024 with a liberty to the respondent to file reply, in case they oppose the appointment of arbitrator within three weeks after the service of notice. Learned counsel on behalf of the respondent entered into appearance on 24.09.2024, however, prayed for some time to seek instructions and file a reply. Pursuant thereto this Court, *inter alia*, directed as under-

“3.Mr. Bhardwaj states that he has no instructions with regard to the grounds upon which the respondent wish to resist the appointment of an arbitrator. He nonetheless seeks time to file replies.

4. As this is the first extension sought, it is granted subject to payment of costs of Rs.7,500/- in each of the arbitration petition. Costs be paid to the petitioner within one week from today and affidavits in reply may be filed within two weeks from today.”

9. However, neither has any reply been filed on behalf of the respondent on record nor has anyone appeared on behalf of the respondent today.

10. Since the existence of the arbitration clause is evident from a perusal of the Term Loan Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (supra), ‘***TRF Limited v. Energo Engineering Projects Ltd***’, (2017) 8 SCC 377, ‘***Bharat Broadband Network Limited v. United Telecoms Limited***’, 2019 SCC 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.



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11. Accordingly, Ms. Ruchi Agnihotri, Advocate (Mob. No.:+91.9873691920) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
12. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.
13. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure 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.
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

OCTOBER 28, 2024/sl