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

+ **ARB.P. 1043/2023**

ADITYA BIRLA FINANCE LIMITED

..... Petitioner

Through: Mr Aman Vasisth and Ms Sanya
Lamba, Advs.

versus

CITY OIL PRIVATE LIMITED & ORS

..... Respondents

Through: Ms Seema Singh, Mr Dayanand
Sharma and Ms Kalpana Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

24.04.2024

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. As per the petitioner, the petitioner had initially availed loan in the year 2017 and had executed the Term Loan Agreement dated 12.09.2017. The Term Loan Agreement dated 12.09.2017 contemplated the seat of arbitration as Mumbai. As per the petitioner, the said loan was subsequently restructured and modified in the year 2018 and thereafter in the year 2019.
3. In the year 2019, the petitioner executed a Facility Agreement dated 31.10.2019 and Deed of Guarantees dated 31.10.2019.
4. Subsequently, the petitioner executed a Facility Agreement dated 22.07.2020, Extension of Mortgage dated 27.07.2020, Irrevocable Power of Attorney dated 22.07.2020.
5. Except the first loan documents of the year 2017, all other subsequent



documents contained arbitration clause wherein the place of the arbitration has been held to be Delhi.

6. Clauses 25.17 of the Loan Agreement dated 31.10.2019, Facility Agreement dated 31.10.2019, Clause 32.17 of Term Loan Agreement dated 22.07.2020 and Clause 32.17 of Facility Agreement dated 24.11.2021. They are reproduced as under:

Loan Agreement dated 31.10.2019

“25.17 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the “DRT Act”), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of



terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

Facility Agreement dated 31.10.2019

32.17 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the “DRT Act”), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will



result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

Term Loan Agreement dated 22.07.2020

“32.17 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the “DRT Act”), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions herein before contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”



Clause 32.17 of Facility Agreement dated 24.11.2021

“32.17 Arbitration

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions herein before contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

7. All the said clauses contemplate the venue of Arbitration at Delhi.

Hence, the present petition.

8. The respondents have filed their counter affidavit where their only



defence is that this Court does not have territorial jurisdiction in view of Clause 23.16 of the Term Loan Agreement dated 12.09.2017, which reads as under:

“23.16 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by ABFL. All parties to this Agreement hereby expressly consent to ABFL being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by ABFL acting as the sole appointing authority. Only a former judge of any High Court or the Supreme Court will be eligible to act as an arbitrator under this clause. The place of arbitration shall be Mumbai. Parties agree that the Courts in Mumbai shall have the exclusive jurisdiction to exercise all powers under the Arbitration & Conciliation Act, 1996.”

9. In the present case, the Term Loan Agreement dated 12.09.2017 was subsequently modified by subsequent Loan Agreements, Line Of Credit documents and Facility Agreements executed between the petitioner and the respondents. The said documents contain arbitration clause with the venue of arbitration at Delhi. Even the notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking arbitration dated 13.07.2023 relies on the agreements dated 2019, 2020 and 2021 wherein the venue of arbitration is Delhi.

10. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Sidharth Sharma, Advocate (Mob. No. 7400111111) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.



- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
11. The counter affidavits handed over in Court today is taken on record.

JASMEET SINGH, J

APRIL 24, 2024

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Click here to check corrigendum, if any