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

% **Date of Decision: 28.10.2024**

+ **ARB.P. 1006/2024**

TATA CAPITAL LIMITED

.....Petitioner

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

versus

M/S R.K. AUTOMOBILES & ORS.

.....Respondents

Through: None.

+ **O.M.P.(I) (COMM.) 240/2024**

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 & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

ARB.P. 1006/2024

1. The present petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The petitioner *vide* sanction letter dated 24.04.2018 sanctioned a Channel Finance/Inventory Funding Loan Facility to the respondents.



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Pursuant thereto, the aforesaid facility was renewed and the parties executed a Loan cum Guarantee (Channel Finance) Agreement on 20.05.2022. Further, the Channel Finance Facility was extended through Extension Letters dated 25.02.2023, 23.03.2023 and 29.04.2023.

3. In terms of the aforesaid agreement and letters the respondents agreed that the security previously executed, as provided in Schedule of the agreement to secure the loan will remain valid and subsisting in favour of the petitioner.

4. The disputes have arisen in the context of the Loan cum Guarantee (Channel Finance) Agreement dated 20.05.2022. The respondent no.1 is the borrower whereas respondent no(s) 2 and 3 are guarantors and as such, stated to be jointly and severally liable.

5. Dispute/s have arisen between the parties on account of alleged default on the part of the respondents in paying the requisite instalments. The respondents failed to make the payment/s despite being granted opportunities to clear the outstanding dues.

6. 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 Obligators and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as the rights and liabilities of the parties under these T&C or alleged breach of the Facility Documents or anything done or omitted to be pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement. 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 (iii) 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 reenactment 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 Obligors.

13. JURISDICTION

Subject to Clause 12 above, Subject to Clause 12 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. 18 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."

- 7. It is apparent from a perusal of Annexure -1 of the Agreement that the seat of arbitration is Delhi.
- 8. Disputes having arisen between the parties, a loan recall/termination



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notice dated 17.05.2024 was issued by the petitioner to invoke arbitration and calling upon the respondents to make the payment of the outstanding amount. However, the respondent is stated to have failed to respond to the same.

9. Learned counsel for the petitioner submits that in terms of the judgment of this Court in '**Overnite Express Limited v. Delhi Metro Rail Corporation**', (2022) 294 DLT 83, it is incumbent on this Court to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

10. As such, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole arbitrator to adjudicate the dispute.

11. 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 seek to oppose the appointment of arbitrator within three weeks after the service of notice. The learned counsel on behalf of the respondents entered appearance on 24.09.2024 before this Court, and prayed for some time to seek instructions and file a reply. This Court passed the order 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."

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



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13. 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 prayed for, and as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC (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.

14. Accordingly, Ms. Ruchi Agnihotri, Advocate (Mob. No.: +91.9873691920) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be at liberty to raise preliminary objection/s as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

16. 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.

17. 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.

18. Parties shall share the arbitrator's fee and arbitral cost, equally.

19. 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.



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

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

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22. This is a petition under Section 9 of the A&C Act seeking urgent interim orders.

23. It is averred in the petition that respondents with an intent to defeat the claim of the petitioner, are likely to dispose-off their assets and properties which are not mortgaged to the petitioner. It is submitted by the learned counsel for the petitioner that they apprehended that the same will cause grave prejudice to the petitioner since no alternate property will be available for the satisfaction of the Award, if passed in favour of the petitioner.

24. Since the Arbitral Tribunal has already been constituted to adjudicate the disputes between the parties, it would be apposite if the present petition under Section 9 of the A&C Act is treated as an application under Section 17 of the A&C Act and accordingly dealt with by the learned Sole Arbitrator. It is directed accordingly.

25. In view of the urgency emphasized by the learned counsel, the petitioner shall be at liberty to request the learned Sole Arbitrator for expeditious consideration of the application under Section 17 of the A&C Act.

26. The present petition is disposed of with the aforesaid directions. The pending applications are also disposed of.

SACHIN DATTA, J

OCTOBER 28, 2024/sl