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

+ **ARB.P. 1106/2023**

TATA CAPITAL FINANCIAL SERVICES LIMITED..... Petitioner

Through: Mr. Savyasachi Sahai, Mr.
Vishwajeet Singh Shekhawat, Advs.

versus

MARSHALL MACHINES LIMITED & ORS.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

29.01.2024

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1. This is a petition seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties arising from Working Capital Demand Loan Agreement dated 25.02.2019, 09.11.2020 and 05.01.2022.
2. At the outset, Mr. Singh, learned counsel for the petitioner submits that pursuant to the Scheme of Amalgamation, the petitioner has amalgamated into TATA Capital Limited.
3. On his oral request, the same is allowed and the name of the petitioner is changed from TATA CAPITAL FINANCIAL SERVICES LIMITED to TATA CAPITAL LIMITED. All the assets and liability of TATA CAPITAL FINANCIAL SERVICES LIMITED now vest with TATA CAPITAL LIMITED.
4. In the present case, the petitioner had advanced a Working Capital Demand Loan facility of Rs. 50 lakhs to the respondents on each occasion



i.e. 25.02.2019, 09.11.2020 and 05.01.2022. As the respondents defaulted in making the repayment, the petitioner issued Loan Recall Notice dated 31.08.2023 for an amount of Rs. 52,44,097. Since the same was defaulted, the petitioner invokes the arbitration clause. Clause 12 of the Term Loan Agreement reads as under:-

***“Clause 12 of the Working Capital Demand Loan Agreement
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"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 in the place as mentioned at Serial No. 18 of Annexure 1 hereto, in accordance with the Arbitration and Conciliations 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 in English language. Cost of arbitration shall be borne by the Obligors. "

5. Notice was issued on 19.10.2023. As per the service report, the notice has been served and despite service there is nobody appearing for the respondent in first call and even in the second call, there is no appearance on behalf of the respondent.



6. For the said reasons, the petition is allowed with the following directions are issued:-

i) Ms. Kritika Mehra (Mob. No.9873734270) 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.

7. The petition is disposed of in the aforesaid terms.

8. The amended memo handed over in Court today is taken on record.

JANUARY 29, 2024/NG

JASMEET SINGH, J