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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 167/2022 and I.A. 2264/2022

OVINGTON FINANCE PRIVATE LIMITED

..... Petitioner

Through: Mr. Satyam Kumar, Advocate *via*
video-conferencing.

versus

T.D. ENGINEERING WORKS & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

14.05.2024

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By way of the present petition filed under section 11(5) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Sanction Letter dated 05.02.2018 ('Sanction Letter') and Loan Agreement dated 06.02.2018 ('Loan Agreement').

2. Notice on this petition was issued on 10.02.2022. The record shows that the matter has been pending for service of the respondents and for completion of pleadings before the learned Joint Registrar since 25.04.2022.
3. A combined reading of orders dated 27.02.2023, 22.01.2024 and 09.04.2024 shows that service upon all the respondents is complete. However, the respondents have chosen not to be represented. They have also not filed any reply in the matter.
4. In view of the above, Mr. Satyam Kumar, learned counsel appearing for the petitioner submits, that the respondents be set *ex-parte* and a



learned Arbitrator be appointed to adjudicate upon their disputes with the respondents.

5. Mr. Kumar has drawn the attention of this court to clause 12 of the Loan Agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with arbitration proceedings to be conducted at New Delhi.
6. Though there is no specific provision relating to territorial jurisdiction in respect of the disputes between the parties, it is noticed that the Loan Agreement that forms the basis of the transaction was signed at New Delhi; the petitioner company is also based in New Delhi.
7. As per the record, the petitioner invoked arbitration *vide* Notice dated 06.08.2021; to which the respondents have not sent any reply. The quantum of the petitioner's claim against the respondents is stated to be about Rs. 9.30 lacs.
8. Upon a conspectus of the averments contained in the petition, and the submissions made at the Bar, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 06.08.2021, do not appear *ex-facie* to be non-arbitrable.
9. Accordingly, the present petition is allowed and **Ms. Jyoti Nambiar, Advocate (Cellphone No.: +91 9899127654)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis



of the Delhi International Arbitration Centre ('DIAC'), in accordance with applicable rules.

10. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
11. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
12. 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 merits, in accordance with law.
13. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
14. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator.
15. The petition stands disposed-of in the above terms.
16. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 14, 2024

V.Rawat