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

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Date of Decision: 22.11.2024

+ **ARB.P. 1223/2024**

(10) TATA CAPITAL LIMITED (TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES LTD)Petitioner

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

versus

ANG LIFE SCIENCES INDIA LTD & ANR.Respondents

Through: None.

+ **O.M.P.(I) (COMM.) 289/2024**

(76) TATA CAPITAL LIMITED (TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES LTD.)Petitioner

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

versus

ANG LIFE SCIENCES INDIA LTD. & ANR.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

ARB.P.1223/2024

1. A 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 for adjudicating the disputes between the parties. The disputes between the parties have arisen in context of a 'Master Lease Agreement' dated 01.06.2022 (hereinafter '*the master lease agreement*') and



a Letter of Guarantee dated 01.06.2022 (hereinafter '*the letter of guarantee*') along with an addendum sanction letter dated 29.06.2022.

2. In terms of the aforesaid master lease agreement, a lease facility was availed by the respondent no.1 for a sum of Rs. 10,00,00,000/- (Rupees Ten crores only) and the said master lease agreement was secured by the letter of guarantee, in terms of which the respondent no.2 is the guarantor.

3. The disputes between the parties have arisen on account of the alleged default on the part of the respondents in paying the amounts due under the master lease agreement ('event of default').

4. A 'Dunning letter' dated 08.01.2024 was sent by the petitioner calling upon the respondents to settle the outstanding amounts under the master lease agreement. However, the respondents were unable to settle the said outstanding dues. Consequently, a 'Termination and Demand of Loan and Invocation of Arbitration' notice dated 22.01.2024 was issued by the petitioner calling upon the respondent to return the goods/equipment leased under the master lease agreement as well as settle the outstanding amounts, failing which, arbitration would be invoked by the petitioner for adjudicating the disputes between the parties. However, no response thereto was sent by the respondents.

5. The master lease agreement contains an arbitration clause as under:-

21.4 Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lessor in connection with the Agreement or as to the interpretation, validity, implementation or effect of the Agreement or alleged breach of the terms of this Agreement or anything done or omitted to be done pursuant to the Agreement, the same shall be settled by arbitration to be held at place as set out in the Master Lease Summary Schedule 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 as per the procedure below:

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 (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitrator shall be conducted under the provision of the Arbitration and Conciliation Act, 1996 together with the amendments, any statutory modifications or re-enactment 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 the arbitration shall be borne by the Obligor/s.

6. Clause 32 of the letter of guarantee also contains an arbitration clause as under:-

32. ARBITRATION

If any dispute, difference or claim arises between any of the Guarantor/s and TCFSL in connection with the Lease Assets under Lease Agreement or as to the interpretation, validity, implementation or effect of the Lease Agreement and /or the Letter of Guarantee or as to the rights and liabilities or alleged breach of the Lease Agreement and /or the Letter of Guarantee or anything done or omitted to be done pursuant to the Lease Agreement, the same shall be settled by arbitration to be held in the place to be held at the place as mentioned at Item No.7 of the First Schedule hereto in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendments thereto and shall be referred to the arbitrator as per the process set out in the Lease Agreement. The award of the arbitrator shall be final and binding on all the parties concerned. The arbitration proceedings shall be in English language. The cost of arbitration shall be borne by the Lessee and Guarantors.



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7. Disputes having arisen, a notice of invocation dated 09.04.2024 was issued by the petitioner invoking arbitration under Clause 21.4 of the master lease agreement against respondent no.1 and clause 32 of the letter of guarantee against respondent no.2. *Vide* the said notice, the petitioner also proposed the names of three persons, out of which any one could be appointed as the Sole Arbitrator. No response thereto was submitted by the respondents.

8. As the parties were unable to mutually agree upon the appointment of a Sole Arbitrator to adjudicate the disputes between the parties, the present petition has been filed.

9. None appears for the respondent despite notice being issued by the Court on 09.08.2024. An affidavit of service has been filed by the petitioner wherein it has been brought out that both the respondents have been duly served via speed post, courier and email. In these circumstances, the present petition has been taken up for disposal today.

10. Since the existence of the arbitration agreement is evident from a perusal of the Agreement, there is no impediment to appointing an independent Sole Arbitrator to adjudicate 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 v. HSCC (India) Ltd* (2020) 20 SCC 760, *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 Stamp & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co.*



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11. Accordingly, Ms. Pinky Anand, Senior Advocate (Mob. No.: +91 9810046775) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. It is made clear that the reference to arbitration under the master lease agreement and, under the letter of guarantee shall be independent of each other, although the learned sole arbitrator may have common hearings and allow common evidence to be adduced, as may be deemed appropriate.

13. Respondents shall be entitled to raise appropriate jurisdictional objections, if any, before the learned sole arbitrator which shall be duly considered by the learned sole arbitrator on merits.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing 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.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

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

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

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19. This is a petition filed under Section 9 of the A&C Act seeking urgent interim orders.
20. It is averred in the petition that the emergent situation has been created on account of the petitioner's apprehension that the goods/equipment leased out to the respondents under the master lease agreement dated 01.06.2020 may be misappropriated by them. It is further submitted that as a result, the respondents may evade their obligation to settle the outstanding amounts under the said master lease agreement.
21. Since a learned sole arbitrator has already been appointed 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.
22. In view of the urgency of the relief sought for in the present petition, the petitioner shall be at liberty to request the learned Sole Arbitrator for expeditious consideration thereof.
23. The present petition is disposed of with the aforesaid directions.

SACHIN DATTA, J

NOVEMBER 22, 2024/dn