



2024:DHC:9792



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

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Date of Decision: 17.12.2024+ **ARB.P. 1304/2024 & I.A. 37183/2024**

NORTH EAST CENTRE FOR
TECHNOLOGY APPLICATION AND REACHPetitioner
Through: Mr. Saharsh Jauhari, Advocate.
versus

GRACE RTP BAMBOO PVT LTD AND ORSRespondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition under Section 11(5) read with Section 11(6)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter as '*the A&C Act*') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Technology Development Assistance Agreement dated 08.11.2007 (hereinafter as '*the agreement*'), in terms of which, financial assistance for a sum of Rs. 2.4 crores was to be provided by the Technology Information, Forecasting & Assessment Council (hereinafter '*TIFAC*'), through the National Mission on Bamboo Application (hereinafter as '*NMBA*'), to the respondent no.1/Company for setting up of a 'Bamboo ply board Manufacturing Plant'. Respondent nos.2 and 3 are the directors in respondent no.1/company.



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3. TIFAC is an autonomous body under the Department of Science and Technology, Ministry of Science and Technology, Government of India and the NMBA was set up as a part of TIFAC in 2004, as a technology mission for development of bamboo products.

4. However, on 18.04.2012, the North East Centre for Technology Application and Reach (petitioner) was set up as an autonomous registered society by the Department of Science and Technology, Ministry of Science and Technology, Government of India. Consequently, it was communicated by TIFAC, that NMBA stands merged into the petitioner /North East Centre for Technology Application and Reach, and that agreements entered into by the NMBA, as a part of TIFAC, would be construed to have been entered into by the petitioner. Consequently, the petitioner is stated to be the “successor / permitted assign” of TIFAC.

5. As per the agreement, the amount of financial assistance received by the respondent no.1 was payable in 10 equal instalments of Rs. 24 lakhs each.

6. Disputes between the parties have arisen on account of the alleged failure of the respondents in paying the requisite instalments. The respondents failed to make the payment despite being granted opportunities to clear the outstanding dues.

7. Clause XVII of the technology development agreement contains the arbitration clause and reads as under:-

“XVII. Arbitration and Jurisdiction

a. If any dispute or difference arises between the Parties hereto as to the construction, interpretation, effect and implication of any provision of this Agreement including the rights or liabilities or any claim or demand of any Party against other or in regard to any matter under these presents but excluding any matters, decisions of determination of which



is expressly provided for in this Agreement, such disputes or differences shall be referred to the sole arbitration of the Secretary, Department of Science & Technology, Government of India, or that of his nominee and his decision will be final and shall be binding on all the Parties. A reference to the arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration Act and Reconciliation Act, 1996, and the rules framed there under for the time being in force.

b. If the "COMPANY" does not make any claim or demand or raise any dispute or difference in terms of Sub Clause a" of this Clause within six months from the date on which such claim or demand arises, the "COMPANY?" shall deem to have waived and abandoned such claim or demand or the right to raise such dispute or difference against "TIFAC".

i. The venue of the Arbitration shall be at Delhi.

ii. The Parties hereby agree to consent to the extension of time for making the award by the Sole Arbitrator, if the sole arbitrator so requires.

iii. Each Party shall bear and pay its own cost of the arbitration proceedings unless the arbitrator otherwise decides in the award.

iv. The provision of this clause shall not be frustrated, abrogated or become in-operative, notwithstanding this Agreement expires or ceases to exist or is terminated or revoked or declared unlawful.

The Courts at Delhi shall have exclusive jurisdiction in all matters concerning this Agreement, including any matter arising out of the arbitration proceedings or any award made therein."

8. Disputes having arisen, a notice invoking arbitration was issued by the petitioner on 10.12.2021. However, the said notice was not responded to. Hence, the present petition has come to be filed.

9. None appears for the respondents despite notice. An affidavit of service dated 29.10.2024 has been filed by the petitioner wherein it has been stated that all the respondents have been duly served by speed post and courier. In these circumstances, the present petition has been taken up for hearing despite non-appearance of the respondent.

10. It is relevant to note that only respondent no.1 was a party to the agreement as originally executed. The respondents nos.2 and 3, are directors of respondent no.1; however, not a party to the agreement in their individual



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capacity. During the course of the arguments, learned counsel for the petitioner confines to seeking that the disputes between the petitioner and the respondent no.1 be referred to arbitration and an independent sole arbitrator be appointed to adjudicate the same.

11. As held in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine SC 1754, the scope of enquiry in these proceedings, is confined to ascertaining the existence of an arbitration agreement. In the present case, since the existence of the arbitration agreement is, *prima facie*, apparent from a perusal of the agreement, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties.

12. Also, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (INDIA) Limited***, (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, (2019) 5 SCC 755, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

13. Accordingly, Mr. Alok Agarwal, District Judge, (Retd.), (Mobile - +91 9910384729) is appointed as the Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent no.1.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

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



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16. The respondent shall also be entitled to raise claims/counter claims, if any, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

17. The learned sole Arbitrator shall fix his fees in consultation with the parties.

18. The petition is allowed in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

DECEMBER 17, 2024/dn