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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 44/2024

TATA CAPITAL FINANCIAL SERVICES LIMITED

.....Petitioner

Through: appearance not given

versus

BLACKBERRY OVERSEAS PRIVATE LIMITED & ORS.

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

07.10.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputed between the parties.
2. The facts are that the petitioner and respondent No. 1 entered into a Loan Agreement dated 31.01.2019 wherein the petitioner advanced a loan to the respondent No. 1 for which the respondent Nos. 2 and 3 were personal guarantors.
3. *Vide* sanction letter dated 29.01.2019, a loan of Rs. 45,15,500/- was paid and the respondent was liable to pay a sum of Rs. 1,64,381/- by the 5th day of every calendar month.
4. The Loan Agreement contains the arbitration clause being clause 19 which reads as under:-

“19.1 If any dispute, difference or claim arises between the obligors and Lender in connection with the Facility or the security 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 Mumbai/ Delhi/ Kolkata/ Chennai as may be decided by the Lender 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 by the Lender. The award of the arbitrator shall be final and binding on all parties concerned.

19.2 The Facility Documents shall be governed by the laws of India.

19.3 The Borrower agrees that subject to the provisions of Clause 19.1 above, the courts of Mumbai or the courts at the venue of arbitration decided by the Lender in accordance with Clause 19.1 above alone shall have the exclusive jurisdiction to entertain and try all matters arising from and out of the Facility Documents.”

5. As the respondents defaulted in repayment of the said amount, the petitioner issued notice invoking arbitration on 17.10.2023. Hence the present petition.
6. On 08.07.2024, the respondent sought and was granted 4 weeks to file a reply. However, no reply has been filed and there is nobody appearing on behalf of the respondents.
7. I am of the view that the Annexure-1 of the said Agreement is signed both by the respondent Nos. 2 and 3 as borrowers, co-borrowers / guarantors. Even on the sanction letter, the respondent Nos. 2 and 3 have signed as guarantors.
8. For the said reasons, the petition needs to be allowed and the following directions as issued:-



- i) Ms. Chand Chopra, Advocate (Mob. No. 9915907494) 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').
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
9. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 7, 2024 / (MS)

Click here to check corrigendum, if any