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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1427/2024

TATA CAPITAL LIMITED

.....Petitioner

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

versus

M/S. GANDHI ELECTRICALS AND ELECTRONICS & ORS.

.....Respondents

Through: Advocate (appearance not given).

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****ORDER****12.11.2024**

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1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of the Loan-Cum-Guarantee (Channel Finance) Agreement dated 11.01.2024 (hereinafter '*the Agreement*').

2. It is alleged that the respondents defaulted in repaying the loan amount and hence the disputes arose between the parties. The said Agreement contains an arbitration clause which reads as under:-

"12. Arbitration

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 these T&Cs or alleged breach



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of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement.

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 arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its 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 arbitration shall be borne by the Obligors."

3. Learned counsel for the petitioner concedes that the appointment procedure mentioned in the arbitration agreement is no longer valid and it is now incumbent on this Court to appoint an independent arbitrator as mandated by the Supreme Court in ***Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company*** 2024 INSC 857.



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4. A notice for recall of loan, as also for invocation of arbitration, was sent by the petitioner to the respondents on 20.08.2024. It was, *inter-alia*, stated therein as under:-

“38. In the event you all (i.e. Nos. 1 to 3 arrayed hereinabove) fail to comply with your payment obligations, it shall be presumed that disputes, differences, claims etc., have arisen between You and our Client and this notice may be treated as notice invoking arbitration under Clause 12 of the Loan Cum Guarantee (Channel Finance) Agreement dated January 11, 2024 read with the terms of Master Terms and Conditions (Applicable for Channel Finance).”

5. No response to the aforesaid notice was sent by the respondents to the petitioner. Learned counsel for the respondent does not dispute the existence of the arbitration clause, however, she controverts the averments made in the present petition as regards the merits of the claim sought to be raised against the respondent.

6. In terms of ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine 1754, the scope of examination in proceedings under section 11 A&C Act is confined to ascertaining the existence of the arbitration agreement. Since the arbitration agreement is evident from a perusal of the Agreement, there is no impediment in appointing a sole arbitrator to adjudicate the disputes between the parties.

7. Accordingly, Mr. Ishaan S. Sharma, Advocate (Mob.: 9555777622) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties under the aforesaid agreements.

8. Respondents shall be entitled to raise appropriate objections as regards jurisdiction, if any, before the learned sole arbitrator by filing an application under Section 16 of the A&C Act, 1996, which shall be duly



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considered by the learned sole arbitrator on merits

9. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties, requisite disclosure 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.

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

11. Parties shall share the arbitrator's fee and arbitral costs, equally.

12. 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.

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

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

SACHIN DATTA, J

NOVEMBER 12, 2024/at