



2024:DHC:8608



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 07.11.2024

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ARB.P. 1520/2024**TATA CAPITAL LIMITED (TRANSFEREE OF TATA CAPITAL
FINANCIAL SERVICES LTD.)**

.....Petitioner

Through: Ms. Ekta Bhasin and Ms. Sanidhya
Sonthalia, Advs.

versus

M/S. AADINATH STEEL & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL.)**

1. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen between the parties in the context of a Loan-cum-Guarantee Agreement (Channel Finance) dated 24.08.2023.
3. The respondents have allegedly defaulted in re-paying the loan amount. The respondent no.1 is the borrower under the loan agreement whereas the respondent nos.2 and 3 are guarantors. 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***



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T&Cs 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 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 of 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 Obligor/s."

4. Disputes having arisen between the parties, a Loan Recall Notice dated 22.07.2024 was issued by the petitioner to the respondents calling upon the respondents to pay the outstanding amount, failing which it was stated that the matter would be resolved by way of arbitration. The said notice dated 22.07.2024 clearly stated as under:

"35. In the event You All 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



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(Channel Finance) Agreement dated August 24, 2023, read with terms of the Master Terms and Conditions (Applicable for Channel Finance)."

5. No response to the same was sent by the respondents, although, the same was duly served on the respondents as has been brought out by the petitioner through the relevant speed post, tracking reports, filed as document no(s).7, 8 and 9 to the present petition.
6. Consequently, the present petition has come to be filed.
7. None appears for the respondents.
8. An affidavit of service has been filed on behalf of the petitioner wherein it has been brought out that the respondents have been served through registered post, courier and e-mail. The relevant tracking reports along with original postal receipts have been placed on record along with the affidavit of service dated 27.09.2024, filed on behalf of the petitioner. The said affidavit also brings out that the respondents have been duly served by e-mail.
9. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.
10. Since the existence of the arbitration agreement is evident from a perusal of the agreement that has been placed on record, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties. Further, in light of the arbitration clause, and in terms of the judgment 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



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and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

11. Accordingly, Ms. Ruchi Agnihotri, Advocate (Mob. No.: +91.9873691920) is appointed as the learned Sole Arbitrator to adjudicate the disputes between the parties.

12. The respondents would be at liberty to raise preliminary/jurisdictional objections, if any before the learned Sole Arbitrator which shall be duly considered and adjudicated by the learned Sole Arbitrator in accordance with law.

13. It is further agreed by the respective counsel that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

14. 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.

15. 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.

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

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

SACHIN DATTA, J

NOVEMBER 7, 2024/cl