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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 18.12.2024**+ **ARB.P. 1557/2024****TATA CAPITAL LIMITED**

.....Petitioner

Through: Mr. Sanidhya Sonthalia, Ms. Ekta Bhasin, 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 (hereinafter as '*the A&C Act*') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. Disputes between the parties have arisen in context of an Agreement for Term Loan (Term-Loan Facility) dated 29.06.2021 (hereinafter as '*the loan agreement*'), in terms of which, the respondent no.1 availed a term loan facility of Rs. 1.3 Crores; the respondent nos. 2- 4 are the guarantors thereunder.
3. Disputes between the parties have arisen on account of alleged non-payment by the respondent no.1 of its monetary dues/instalments under the loan agreement.
4. Clause 13 of the loan agreement contains an arbitration clause as



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under:-

“13. 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 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 arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 18 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.”

5. Disputes having arisen between the parties, a legal notice for ‘Recall of loan and invoking of arbitration’ dated 22.07.2024 was issued by the petitioner. It was, *inter alia*, stated therein as under:-



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“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 13 of Agreement for Term Loan dated June 29, 2021, read with the terms of Master Terms and Conditions (Applicable for Term loan), executed by You Nos. 1 to 4.”

6. No response to the aforesaid notice was sent by the respondents to the petitioner. In the above circumstances, the present petition has been filed seeking the appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

7. Notice was issued by the Court on 04.10.2024. As none appeared for the respondents, a fresh notice was issued by the Court on 29.10.2024. An affidavit of service dated 26.11.2024 has been filed by the petitioner wherein it has been stated that the petitioner has taken the requisite steps to serve the respondents at their known address/es. It has been brought out that the respondent nos. 1-3 were duly served *via* courier. The notice served *via* courier to the respondent no.4, was returned with the notations, “Receiver shifted from given address” and notice served *via* speed post returned with the notations, “Addressee left without instructions”. It is also stated that respondent nos.1 and 4 were served *via* email at aadinathenterprises24@gmail.com, aadinathenterprises35@gmail.com and aadinathsteel24@gmail.com.

8. In these circumstances, the present petition is taken up for disposal despite non-appearance of the respondents.

9. Since the existence of the arbitration clause is evident from a perusal of the Term Loan Agreement, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in **SBI General**



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Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 532 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.

10. Further, 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 and *Bharat Broadband Network Limited v. United Telecoms Limited*, 2019 SCC OnLine SC 547 and *Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company* 2024 SCC OnLine SC 3219, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

11. Accordingly, Mr. Abhinav Garg, Advocate (Mob.: 9810196968) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. 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.

13. 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.

14. 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.

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



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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 is allowed in the above terms.

SACHIN DATTA, J

DECEMBER 18, 2024/dn