



2024:DHC:9804



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

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Date of Decision: 18.12.2024+ **ARB.P. 1558/2024****TATA CAPITAL LIMITED
(TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES LTD.)**

.....Petitioner

**Through: Mr. Sanidhya Sonthalia, Ms. Ekta
Bhasin, Advs.**

versus

M/S. AADINATH STEEL

.....Respondent

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 16.09.2020 (hereinafter as '*the loan agreement*'), in terms of which, the respondent availed a term loan facility of Rs. 2.39 Crores.
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 12 of the loan agreement contains an arbitration clause as under:-



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“12. 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 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 at the place as mentioned at Serial No. 18 of Annexure 1 hereto, 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. The arbitration proceedings shall be in English language. 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:-

“In the event You Nos. 1 and 2 fail to comply with your payment obligations, it shall be presumed that disputes, differences, claims etc., have arisen between You Nos. 1 and 2 and our Client and this notice may be treated as notice invoking Arbitration under Clause 12 of Agreement for Term Loan dated September 16, 2020.”

6. No response to the aforesaid notice was sent by the respondent 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 respondent, 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 respondent at its known address/es. It has been brought out that the respondent has been duly served *via* speed post, courier and email.

8. In these circumstances, the present petition is taken up for disposal



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despite non-appearance of the respondent.

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 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, 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 the 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. The respondent 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.



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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.
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