



2024:DHC:7802



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

% **Date of Decision : 07.10.2024**

58

+ **O.M.P. (T) (COMM.) 100/2024 & I.A. 41561/2024**

RELIGARE FINVEST LIMITEDPetitioner
Through: Mr. Siddharth Sharma and Ms. Ishika
Chauhan, Advocates.

versus

WIDECRAN HOLDINGS PRIVATE LIMITED AND ORS

.....Respondents

Through: Mr. Aman Raj Gandhi, Mr. Vardaan
Bajaj and Mr. Ojasvi Sharma,
Advocates.

59

+ **O.M.P. (T) (COMM.) 101/2024 & I.A. 41562/2024**

RELIGARE FINVEST LIMITEDPetitioner
Through: Mr. Siddharth Sharma and Ms. Ishika
Chauhan, Advocates.

versus

KONTI INFRAPOWER
AND MULTIVENTURE PRIVATE LIMITED AND ORS.

.....Respondents

Through: Mr. Aman Raj Gandhi, Mr. Vardaan
Bajaj and Mr. Ojasvi Sharma,
Advocates.

60

+ **O.M.P. (T) (COMM.) 102/2024 & I.A. 41563/2024**

RELIGARE FINVEST LIMITEDPetitioner
Through: Mr. Siddharth Sharma and Ms. Ishika
Chauhan, Advocates.

versus

EDISONS INFRAPOWER
AND MULTIVENTURE PRIVATE LIMITED AND ANR.



2024:DHC:7802



.....Respondents

Through: Mr. Aman Raj Gandhi, Mr. Vardaan Bajaj and Mr. Ojasvi Sharma, Advocates.

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+ **O.M.P. (T) (COMM.) 103/2024 & I.A. 41564/2024**

RELIGARE FINVEST LIMITED

.....Petitioner

Through: Mr. Siddharth Sharma and Ms. Ishika Chauhan, Advocates.

versus

ASIAN SATELLITE

BROADCAST PRIVATE LIMITED AND ORS.

.....Respondents

Through: Mr. Aman Raj Gandhi, Mr. Vardaan Bajaj and Mr. Ojasvi Sharma, Advocates.

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

1. The present petitions under Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) seek substitution of the learned Sole arbitrator who has withdrawn from office *vide* order dated 09.09.2024.

2. The arbitration clause between the parties is contained in a Loan Agreement dated 15.03.2014 which is in the following terms: -

“16. Arbitration and Jurisdiction

16.1 Arbitration: Any and all disputes, claims, differences arising out of or in connection with this Agreement and the Schedule(s) of Terms/Repayment Schedule/s attached hereto or the performance of this Agreement shall be settled by Arbitration to be referred to a sole arbitrator to be appointed by the Lender and the award thereupon shall be final, conclusive and binding upon the parties to this Agreement. The place of the arbitration shall be in Delhi and the proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory



amendments thereof. Each party shall bear cost of preparing and representing its case, before the cost of arbitration, including fees and expenses of arbitrator, shall be shared equally by the parties, unless the Award otherwise provides.

16.2 Subject to arbitration clause herein, the borrower further agree that all claims, differences and disputes, arising out of or in relation to dealings / transaction made in pursuant to this agreement including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only.”

3. The learned Sole Arbitrator was nominated by the petitioner itself pursuant to which the learned Sole Arbitrator entered reference *vide* communication dated 14.05.2019.
4. On 01.06.2019, the petitioner filed its statement of claim before the learned Sole Arbitrator. An application under Section 16 came to be filed before the learned Sole Arbitrator which came to be disposed of. The same was subject matter of appellate proceedings under Section 37 of the A&C Act and also proceedings before the Supreme Court. The arbitral proceedings were protracted on account of the aforesaid.
5. The petitioner also previously filed in this Court an application under Section 14 and 15 of the A&C Act seeking appointment of a substitute arbitrator which came to be dismissed by this Court *vide* order dated 04.04.2024. The same was again a subject matter of an SLP filed in the Supreme Court which was disposed of on 05.08.2024.
6. It is in the above backdrop, the learned Sole Arbitrator *vide* order dated 09.09.2024 recused herself from the case. It was, *inter alia*, observed as under :-

“6. Although, both the High Court and the Supreme Court have dismissed the claimant’s petition for a change in the Arbitrator and for which this Tribunal is grateful to both the Courts, it feels that in



view of the claimant pursuing the matter even after the High Court had dismissed its petition by a detailed order in going to the Supreme Court, it will not be appropriate nor comfortable for this Tribunal to proceed with the matter any further. The claimant having expressed its apprehension and lack of faith in this Tribunal, it feels, ill at ease, to continue in the matter.

7. In view of the aforesaid, I recuse from the case. The parties are at liberty to pursue their further course of action in accordance with law."

7. After some hearing, learned counsel for the petitioner concedes that there is no basis for the petitioner to be apprehensive about the impartiality or fairness of the learned Sole Arbitrator and/or to question the manner in which the proceedings have been conducted by the learned Sole Arbitrator. Learned counsel for the petitioner expresses regret at the sentiments expressed by the learned Sole Arbitrator in the order dated 09.09.2024 and which impelled her to recuse herself from the matter.

8. Be that as it may, respective counsel for the parties are in agreement that given the peculiar background and to allay/pre-empt any apprehension regarding the manner of conduct of the arbitral proceedings including on account of the fact that the arbitrator came to be unilaterally appointed in the first instance by the petitioner, an independent substitute Sole Arbitrator be appointed to adjudicate the disputes between the parties.

9. This Court, accordingly, accedes to the joint request of the respective counsel to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

10. Accordingly, Mr. Justice (Retd.) S.J. Mukhopadhyay, Former Judge, Supreme Court of India (Mobile No. +91 7042444206) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.



2024:DHC:7802



11. The arbitration proceedings shall continue from the stage already reached and on the basis of the material evidence already on record of the ongoing arbitral proceedings.

12. The learned Sole arbitrator may proceed with arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act; and in the event of there being any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this Court.

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

14. Parties shall share the arbitrator's fee and arbitral costs, equally. The learned arbitrator shall fix his fees taking into account the submissions of the parties and also the fourth schedule 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 contentions of the parties.

17. Learned counsel for the parties are at liberty to collect the arbitral record from the previous Arbitrator along with the order-sheets/ record of proceedings, and file the same before the substitute arbitrator.

18. The parties are also given the liberty to file a petition under section 29A A&C Act for seeking the extension of mandate of the substitute arbitrator before this Court as and when the need arises.



2024:DHC:7802



19. The present petitions are disposed of in above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

OCTOBER 07, 2024/r, sv