



2024:DHC:10028



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23.12.2024

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ARB.P. 1686/2024**ADITYA BIRLA FINANCE LTD**

.....Petitioner

Through: Mr. Abhay Kakkar, Adv. (through
v/c)

versus

M/S RAGHAV IMPEX & ORS.

.....Respondents

Through: None.

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

1. The present petition has been filed under section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act*') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Loan Agreement dated 08.07.2020 (hereinafter "*the Agreement*") entered into between the petitioner and the respondents, under which a Guaranteed Emergency Credit Line (GECL) for an amount of Rs.16,43,000/- was disbursed as loan to the respondent by the petitioner.
3. Disputes have arisen between the parties on account of alleged default on part of the respondents in paying the requisite instalments. The respondent failed to make the payment despite being granted opportunities to clear the outstanding dues.



4. The arbitration clause in the Agreement between the parties, is in the following terms:-

“32.17 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by the Lender. All parties to this Agreement hereby expressly consent to the Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever shall also be filled only by the Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove. in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“the DRT Act”), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained, shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of termination of the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

5. Disputes having arisen between the parties, a loan recall notice dated 22.02.2023 was issued by the petitioner to the respondent followed by a notice as per clause 32.17 of the agreement for invocation of arbitration dated 15.12.2023. However, the respondents failed to respond.

6. In the above circumstances, the petitioner has approached this Court,



2024:DHC:10028



through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

7. In the present proceedings, notice was issued by the Court on 22.10.2024. However, since none appeared on behalf of the respondents, a fresh notice *vide* order dated 28.11.2024 was issued the Court. An affidavit of service dated 21.12.2024 filed on behalf of the petitioner states that the petitioner has taken the requisite steps to serve the respondents at its known addresses. It has been brought out that the respondents have been duly served through courier.

8. It has also been brought out that the respondents have been duly served via email at acc.ragavimpex@gmail.com, mukesh.raghavimpex@gmail.com and acc.raghavimpex@gmail.com.

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 clause is evident from a perusal of the 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.

11. 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



2024:DHC:10028



arbitrator to adjudicate the disputes between the parties.

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

13. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

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

15. The parties shall share the arbitrator's fee and arbitral costs, equally.

16. 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.

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

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

SACHIN DATTA, J

DECEMBER 23, 2024