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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 17344/2024, CM APPL. 73843/2024 & CM APPL.
73844/2024
UGRO CAPITAL LTD.Petitioner

Through: Mr. Udit Chauhan, Mr. Sumeet Raj,
Mr. Aditya P. Arora, Mr. Prerit Goyal,
Mr. Yash Agarwal, Ms. Kashish
Khurana, Advocates

versus

INDIAN COUNCIL OF ARBITRATION THROUGH ITS
CHAIRPERSON & ANR.Respondents

Through: Mr. Amit Padhi, Registrar, Indian
Council of Arbitration/Respondent
No. 1
Mr. Mayank Mahajan, Advocate for
R-2

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.12.2024

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1. The Petitioner assails the decision of Respondent No. 2 in unilaterally designating the Indian Council of Arbitration¹/ Respondent No. 1 as the institution for arbitration proceedings. The said arbitration arises out of a dispute between the Petitioner and Respondent No. 2 with respect to a Co-Lending Agreement dated 06th November, 2022. The existence of arbitration Agreement is not in dispute. The aforementioned Agreement provides for an alternate dispute resolution clause, which reads as follows:

“13. DISPUTE RESOLUTION

This Agreement and its performance shall be governed by and

¹ “ICA”



construed in all respects in accordance with the laws of the Republic of India. Any dispute relating to the Credit Facility hereunder, or in respect of any rights, liabilities and obligations arising out of this Agreement shall be resolved by arbitration by an institution recognized by the government of India for dispute resolution, such institution will appoint the arbitrator for conducting the arbitration proceedings. The arbitration proceedings shall be carried out in accordance with the provisions laid down by the Arbitration and Conciliation Act, 1996, as amended from time to time and follow the procedure laid down under the rules enacted thereunder. The arbitration proceedings shall be conducted preferably through online means or otherwise through conventional means in English language. The place of arbitration (if conducted through conventional means) shall be New Delhi. The Parties shall equally share the costs of the arbitrator's fees but shall bear the costs of their own legal counsel engaged for the purposes of the arbitration."

2. The recognition of the ICA as an institution for arbitration, is not a matter for adjudication before the Court. The Petitioner's grievance revolves around their contention that Respondent No. 2 did not possess the authority to unilaterally designate ICA as the arbitral institution as per the aforementioned clause.
3. In this context, the Court, on the previous date, *i.e.*, 16th December, 2024, had issued an interim order restraining ICA from proceeding with the appointment of an Arbitrator.
4. Counsel for the Petitioner, on instructions, submits that the Petitioner is agreeable to the Delhi International Arbitration Centre² being designated as the institution for the arbitration proceedings.
5. While raising objections as to the maintainability of the present petition, Counsel for Respondent No. 2, on instructions, also submits that they are amenable to the suggestion, and accordingly, the Court may dispose of the petition by referring the parties to arbitration under the aegis of DIAC.

² "DIAC"



6. Notwithstanding the issue of maintainability, since both parties, by mutual consent, have agreed to designate DIAC as the arbitral institution and have jointly requested the Court to refer the matter to arbitration, the Court is inclined to grant their request, Further, the Court is of the opinion that, although the present proceedings are not specifically under Section 11 of the Arbitration and Conciliation Act, 1996, since the parties are consenting to arbitration , their requested can be acceded.

7. It is clarified that the order passed today does not reflect, nor should it be construed as, any opinion of the Court regarding the competence of the ICA. Rather, this order has been issued in light of the mutual agreement of the parties to designate DIAC as their preferred institution for the resolution of the arbitration proceedings.

8. Considering the above, the present petition is disposed of with the following direction:

8.1 With the mutual consent, Petitioner and Respondent No. 2 are hereby referred to the Delhi International Arbitration Centre. DIAC shall nominate an arbitrator from its panel to adjudicate the disputes between the parties. The arbitration shall be conducted under the aegis of DIAC, and the appointed Arbitrator shall proceed with the arbitration proceedings in accordance with the DIAC Rules.

8.2 The impugned notices issued by Respondent No. 1 are hereby set aside.

9. Accordingly, the present petition is disposed of along with pending applications.

SANJEEV NARULA, J

DECEMBER 20, 2024/ab