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

**+ O.M.P. (T) (COMM.) 39/2016 & I.A. No.6587/2016**

OSTER CONSTRO CARE PVT.LTD & ANR. ..... Petitioners
Through: Mr. Vishwendra Verma, Mr. Pranav Verma & Ms. Neha, Advocates.

versus

KOTAK MAHINDRA BANK LIMITED & ANR. ..... Respondents
Through: Mr. Ashwani Kumar, Advocate for R-1.

**CORAM:**
**HON'BLE DR. JUSTICE S.MURALIDHAR**

**<u>O R D E R</u>**
% **17.11.2016**

1. It is seen that Clause 13.3 forming part of the terms and conditions appended to the loan application form envisages that "all claims and disputes arising out of or in connection with the loan or these terms and conditions shall be filed and adjudicated by the courts or tribunal in the city where the lending branch of Barclays is situated only which shall have exclusive jurisdiction".

2. In the present case, the branch of Barclays which advanced loan to the Petitioner is located in New Delhi. The Petitioner, of course, is in New Delhi and the property which is offered as security for the loan is also in New Delhi.

3. It appears that conditions forming part of the loan agreement that was subsequently executed gave an option to the lender to decide as to the place of

arbitration amongst the cities of Mumbai, New Delhi, Bangalore, Chennai or Kolkata. As it transpires, the loan was taken over by Kotak Mahindra Bank Ltd. and it appointed an arbitrator at Chennai. The loan recall notice dated 26th November, 2015 was addressed to the Petitioner by Kotak Mahindra Bank Ltd. The said letter only intimated the Petitioner about the taking over of the loan from Barclays. It is the case of the Petitioner that notice invoking the arbitration clause and appointing the arbitrator was not received by the Petitioner.

4. Be that as it may, the plea of the Petitioner now is that arbitration should take place in New Delhi.

5. Although counsel for the Respondent pointed out that in terms of the loan agreement, it is open to the Respondent to choose the place of arbitration, he did not dispute that in terms of the clause appended to the loan application form, exclusive jurisdiction of the courts within whose jurisdiction the lending branch is situated, i.e. New Delhi, was recognised. It is also not disputed that Kotak Mahindra Bank Ltd. has its branches all over India including New Delhi. The arbitration proceedings are still at the initial stage. Therefore, no particular prejudice is going to be caused to the Kotak Mahindra Bank Ltd. if the arbitration is asked to be resumed in New Delhi.

6. Within 30 days from today, Respondent No. 1 will inform Petitioner No. 1 of the name of the arbitrator appointed by it in place of the present arbitrator in Chennai. It is made clear that the arbitration before the new Arbitrator shall be resumed from the stage it was at before the arbitrator at Chennai. Within same period Petitioner No.1 will also be informed of the date, time and venue

of the hearing before the new arbitrator.

7. The petition and the application are disposed of.

**S.MURALIDHAR, J.**

**NOVEMBER 17, 2016/**'AA'