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

\+ **ARB.P. 796/2018**

FINCAP FINANCIAL CORPORATION LTD. ..... Petitioner
Through: Ms. Rashi Bansal, Advocate (Mobile No. 9811229212).

versus

R.V. ENTERPRISES & ORS. ..... Respondents
Through: Mr. Abhinav Hansaria, Advocate for R-2 (Mobile No. 9810349842).
Mr. Deepak Singh, Advocate for R-5 (Mobile No. 9811798641).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **01.02.2019**

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 praying to refer the disputes arising between the petitioner and the respondents to arbitration in terms of Clause VI (a) of the Hire Purchase Agreement dated 30.1.2018 entered into between the petitioner and the respondent no.1, respondent nos. 2 to 5 being the partners of the respondent no.1-partnership firm. This arbitration clause as per the Hire Purchase Agreement entered into between the parties reads as under:-

"*VI(a). All disputes, differences, and/or claims, arising out of this Hire*

Purchase Agreement shall be settled by Arbitration in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole arbitration of Mr. Sanjeev Singh Anand, s/o Mr. T.S.Anand, r/o C-21 N.D. South Extention (Part II), New Delhi-110049 or in the case of his death, refusal, neglect or in –capacity to act as such Arbitrator to the sole arbitrator of Mr. Hemant Chaudhary, s/o Late Mr. M.C.Chaudhary, r/o B-4/232 Safdarjung Enclave, New Delhi. The Award given by the Arbitrator shall be final and binding on the parties concerned."

2. The facts of the case are that the petitioner granted a loan under a Hire Purchase Agreement to the respondent no.1 partnership firm of which respondent nos. 2 to 5 are partners, totalling to an amount of Rs.20 lacs. The Hire Purchase Agreement was entered into between the petitioner and the respondent no.1 partnership firm acting through the partner respondent no.2.

3. Respondents no.2 and 6 are alleged to have stood as guarantors in terms of the two agreements of guarantee executed on the same date i.e on 30.1.2018.

4. As per the Hire Purchase Agreement, the petitioner was liable to be repaid/refunded a total sum of Rs.23,50,248/-, in 24 equated monthly instalments of Rs.97,927/-.

5. Pleading that there is default in payment of EMIs because only 5 EMIs have been paid, and the fact that the respondent no.3 denied that Hire Purchase Agreement was without her approval,

consequently the present petition has been filed for referring of the disputes to arbitration including by pleading that the respondent nos. 1 to 5 are threatening to sell off their brand 'Affinity Salon'.

6. No replies have been filed on behalf of the respondents which are on the record of this Court, but it is stated that the respondent no.5 has filed a reply, which is not on record. On behalf of the respondent no.5, it is stated that the reply was returned under objections, and therefore, the same is not on record, and in this reply respondent no.5 has denied that the respondent no.5 was the partner of the partnership firm respondent no.1/M/s R.V.Enterprises. Counsel for respondent no.5 accordingly states that respondent no.5 is not liable.

7. In my opinion, the disputes which are stated between the parties pertaining to the Hire Purchase Agreement dated 30.1.2018 entered into between the petitioner and the respondent no.1 through the respondent no.2, with respondents no. 2 to 5 being stated to be partners of respondent no.5, and the respondent no.6 being the guarantor, are liable to be referred to arbitration in view of Clause VI(a) of the Hire Purchase Agreement which sets out that the disputes will be decided by the arbitration.

8. So far as the guarantee agreement is concerned, the guarantee agreements incorporates by reference the Hire Purchase Agreements, and therefore, respondents no. 2 and 6 who are pleaded to be the guarantors, would also be bound by the arbitration clause contained the main Hire Purchase Agreement dated 30.1.2018.

9. In law a partnership firm is not a separate legal entity, but is only a compendious name of all the partners, and therefore, the respondent no. 2 in fact need not even have signed the letter of guarantee as respondent no.2 so as to be liable as the partner of the respondent no.1 partnership firm.

10. It is therefore seen that there is an arbitration agreement between the parties. Disputes have arisen which are within the scope of the arbitration clause and which have to be decided by a single arbitrator. Since both the Arbitrators stated in the arbitration clause have recused themselves, it is agreed that the disputes be referred to the arbitration of Mr. Pradeep Chaddah, Retired District & Sessions Judge (Mobile No. 9910384665) under the aegis of the Delhi International Arbitration Centre. The Arbitrator will be bound by and will give the necessary compliances as required/specified in Section

12 of the Arbitration and Conciliation Act, 1996. Parties will be governed by the Rules of the Delhi International Arbitration Centre and the Arbitrator will also be paid his fees as fixed by the Delhi International Arbitration Centre.

11. While referring the disputes between the parties to arbitration as arising from the Hire Purchase Agreement dated 30.1.2018 and the Guarantee Agreements of the same date, it is made clear that this Court has not observed as to any finality with respect to whether or not respondents no.2 to 5 were or were not the partners of the respondent/partnership firm, and it will be open to the respondents no.2 to 5 in the arbitration proceedings to plead all disputes of facts and law requiring determination on merits including as to if the respondents no. 2 to 5 are or are not liable on account of these respondents no. 3 to 5 not being partners of the partnership firm. Similar principles are found in Order 30 CPC.

12. Petition is accordingly allowed and disposed of by referring all the disputes to arbitration which arise in any manner or are connected or related to the Hire Purchase Agreement and the Guarantee

Agreements dated 30.1.2018 entered into between the parties as stated above. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 01, 2019/ib