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

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Date of decision: 23.09.2021

- (i) + **ARB.P. 724/2021**
- (ii) + **ARB.P. 726/2021**
- (iii) + **ARB.P. 728/2021**

HERO FINCORP. LIMITED

..... Petitioner

Through Mr. Ajay Kohli and Ms. Saloni Jain,
Adv.

Versus

HEMA AUTOMOTIVE PRIVATE LIMITED

& ORS.

.... Respondents

Through Mr. Kunal Kher, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The above captioned three petitions have been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes between the parties.

2. Since the parties to these petitions and subject matter thereof is more or less similar, therefore, with the consent of counsel representing both the sides, these petitions have been heard together and are being disposed of by this common judgment.

3. According to petitioner, petitioner-company sanctioned loan facility

in the sum of Rs.30 Crores on 22.01.2018 (in Arb.P.724/2021) Rs.20 Crores on 22.01.2018 in (Arb.P.726/2021) and Rs.5 Crores on 23.05.2019 in (Arb.P.728/2021) in favour of the respondent No.1.

4. According to petitioner, written Loan/Facility Agreements were executed in respect of loan facility between respondent No.1 as borrower and petitioner as lender, wherein respondent Nos.2 and 3 agreed to guarantee *inter alia* due repayment of the aforesaid loans as well as adherence of terms and conditions as envisaged therein in their respective personal capacity. Consequently, express Deed of Guarantee dated 23.01.2018, 23.05.2019 and 30.05.2019 (in Arb.P.724/2021, Arb.P.726/2021 & Arb.P.728/2021, respectively) were executed in favour of the petitioner.

5. Further, a Supplementary Agreement dated 23.01.2018 was executed between the petitioner-company as well as the respondent No.1 pursuant to which the "First Tranche" of Rs.24,11,46,458/-, "Second Tranche" of Rs.81,81,600/- and "Third Tranche" of Rs.39,47,100/- were disbursed by the petitioner-company (in Arb.P.724/2021) in favour of respondent No.1.

6. In Arb.P.728/2021, loan of Rs.5 Crores was disbursed by petitioner-company in favour of respondent No.1, however, the said respondent ARB.P.724/2021, 726/2021 & 728/2021

defaulted in repayment of the same. Also, certain disputes arose between the parties after disbursal of amounts against 14 invoices (in Arb.P.726/2021), details of which have been given in Para-8 of the petition.

7. Since respondents failed to adhere to the terms of the repayment of the loan transactions, therefore, petitioner vide notice dated 13.01.2021 recalled the said loan facility and consequently, demanded the total outstanding dues i.e. Rs.35,18,97,268/-, Rs.20,07,50,147/-and Rs.05,11,95,834/- (in these petitions respectively) from the respondents within seven days of the receipt of the said notice but respondents did not reply thereto.

8. During the course of hearing, it has been brought to the notice of this Court by learned counsel for the petitioner that petitioner-company intimated the respondents vide written communication dated 09.03.2021 that it has appointed Mr. S.M. Chopra, Additional District and Sessions Judge, Delhi (Retd.) as the Sole Arbitrator to adjudicate the disputes. However, even after expiry of statutory period of 30 days, respondents neither responded to the same nor gave any concurrence.

9. Thus, it is averred on behalf of petitioner that the aforesaid disputes are required to be adjudicated by the Arbitrator.

10. Mr. Kunal Kher, learned counsel appearing on behalf of respondents has not objected to the appointment of sole Arbitrator for adjudication of dispute between the parties.

11. Accordingly, **Mr. Justice Pradeep Nandrajog (Retd.) (Mobile:981000130)** is appointed sole Arbitrator in these petitions to adjudicate the dispute between the parties.

12. The fees of the learned Arbitrator shall be according to Fourth Schedule of the Arbitration and Conciliation Act, 1996.

13. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

14. Needless to say that all disputes and contentions are open for parties to be raised before the learned Arbitrator.

15. The present petition is accordingly allowed and disposed of.

16. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 23, 2021/r/rk