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

% ***Date of decision: 02.02.2022***

+ **ARB.P. 5/2022**

M/S INCRED FINANCIAL SERVICES LTD. Petitioner
Through: Mr. Puneet Bajaj, Advocate

Versus

M/S SHREE KAMAKSHI MOTORS & ORS. Respondents
Through: Mr. Abhishek Sikdar & Ms. Pallavi
Ray, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with respondents.
2. Petitioner -M/s InCred Financial Services Ltd. claims to be is providing various type of finance facility to its numerous customer/borrower. Petitioner claims that in the course of business, respondent No.1 through respondents No.2 & 3 approached the petitioner for obtaining Working Capital Channel Finance of Rs.1,00,00,000/- (Rupees One Crore only) and Working Capital Term Loan of Rs.50,00,000/- (Rupees

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Fifty Lacs only) and relying on the requests of the respondents, the petitioner vide letter dated 30.04.2018 sanctioned total limit of Rs.1,00,00,000/-. In addition, extension of Working Capital Finance of Rs.1,00,00,000/- was executed through Addendum Sanction by Petitioner for the sum of Rs.1,00,00,000/-. Petitioner claims to have entered into Master Facility Agreement dated 04.05.2018 at Delhi for Working Capital Channel Finance of Rs.1,00,00,000/- (Rupees One Crore only) and Working Capital Term Loan of Rs.50,00,000/ (Rupees Fifty Lacs only) and also furnished Deed of Guarantee dated 04.05.2018 for a sum of Rs.1,00,00,000/- for guaranteeing the obligations of the borrower. The parties also entered into Loan Agreements, executed Annexure-I and Annexure-II being Demand Promissory Note and Additional Condition for Disbursement. According to petitioner, by entering into Master Facility Agreement and signing all the documents respondents bounded themselves by the terms and conditions stated therein. However, respondents failed to maintain financial discipline and further failed to regularly pay the principal and interest due under the loan agreement and also failed to respond to petitioner's calls and so, petitioner was constrained to issue Loan Recall notice dated 12.03.2020.

3. Further, petitioner claims to have filed a petition under Section 9 of



the Act being OMP (I) Comm. 18/2021 before the District Courts, New Delhi ,whereunder the court granted interim relief vide order dated 03.02.2021 and restrained the respondents from creating third party interest in respect of certain properties. Thereafter, petitioner vide notice dated 26.06.2021 invoked arbitration in terms of Clause- 15 (b) of the Loan Agreement/ Master Facility Agreement calling upon the respondents to agree to the appointment of Sole Arbitrator from the list of three arbitrators mentioned in the said notice. The aforesaid petition being OMP (I) Comm. 18/2021 was disposed of vide order dated 17.08.2021 observing that since arbitration proceedings are going to commence, the interim order shall remain in force till disposal of application under Section 17 by the learned Arbitrator.

4. Having received no reply from respondent to the notice dated 26.06.2021, petitioner claims to have sent a reminder notice dated 21.08.2021, however, it was also not replied and petitioner appointed Mr. Amit Jagga, Advocate as the sole Arbitrator. Thereafter, respondent vide its letter dated 24.08.2021 suggested name of Shri Sohith Chaudhary, Advocate as Sole Arbitrator and so, Mr. Amit Jagga, Advocate recused himself to act as the sole Arbitrator in this case. Hence, the present petition has been filed.



5. Learned counsel for petitioner has submitted that in the facts and circumstances of this case, this is a fit case for appointment of an Arbitrator by this Court for adjudication of disputes between the parties.

6. Learned counsel appearing on behalf of respondent submits that the claims raised in the present petition are disputed, however, fairly conceded that the disputes *inter se* parties are arbitrable. Learned counsel also submitted that respondent has no objection if disputes are referred to an independent arbitrator appointed by this Court.

7. Since counsel representing both the sides have consented that the disputes are arbitrable and an independent Arbitrator be appointed by this Court, the present petition is allowed.

8. Accordingly, **Mr. Ajay Kumar Jain, Advocate (Mobile: 9810049722)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

9. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.



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

11. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 02, 2022

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