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

+ **ARB.P. 247/2023, I.A. 26005/2023**

HERO FINCORP LTD

..... Petitioner

Through: Mr.V.D'Costa, Mr.Himanshu
Sharma, advts.

versus

MR GAGANMEET SINGH & ANR.

..... Respondents

Through: Mr.Nikhil Kohli, Mr.Gaurav Gupta,
Mr.Akshaya Ganpath and
Ms.Shrishti, Advts. for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **15.01.2024**

I.A. 26005/2023 (delay of 14 days in filing written submissions)

The present application has been filed on behalf of respondent no.2 for condonation of delay of 14 days in filing the written synopsis on behalf of respondent no.2.

For the reasons mentioned in the application, the delay of 14 days in filing a written synopsis on behalf of respondent no.2 is condoned.

Let the written synopsis on behalf of respondent no.2 be taken on record.

The application stands disposed of.

ARB.P. 247/2023

The Present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act for the appointment of a sole arbitrator for



the adjudication of the disputes *inter se* the parties.

Learned counsel for the petitioner submits that petitioner submits that a deed of guarantee was executed between the petitioner and the respondents. Learned counsel submits that clause 3.43 provides the arbitration clause.

Learned counsel has further invited the attention to the facility agreement dated 30.01.2020 vide which the loan was extended. Learned counsel submits that clause 20 of the Facility Agreement provides the arbitration agreement with the venue, place and seat of arbitration at New Delhi. Learned counsel submits that arbitration has duly been invoked vide notice dated 24.01.2023. Learned counsel submits that as there is agreement and an arbitrable dispute has arisen between the parties, the matter may be referred to arbitration.

Mr. Gaurav Gupta, learned counsel for the respondent has vehemently opposed the reference of the matter to the arbitration predominantly on the following grounds:

- (1) The petitioner has already filed the claim against the borrower before the Resolution Professional (RP) and the RP has admitted the 100% claim. Since the claims have been admitted the petitioner cannot elect its remedy by proceeding against the borrower the RP and guarantors before this court.
- (2) The arbitration has been invoked by virtue of clause 20 of the Facility Agreement dated 30.01.2021. Respondent no.2/Mr. Tript Singh is not the signatory to the Facility Agreement dated 30.01.2024 under which the arbitration has been invoked and since respondent no.2 is not signatory to the facility agreement, he may not be referred to the arbitration as non-signatory to the agreement.



Learned counsel for the petitioner has opposed both the aforesaid contentions on the following grounds:

- (1) The petitioner has made its claim before the RP against the borrower. The liability of the borrower and guarantors are joint and several. The petitioner has within his rights can institute the proceedings against the borrowers as well as guarantors. However, if the petitioner receives the borrowed amount along with the interest, the same shall be adjusted against the award, if any, passed against the respondent.
- (2) Respondent no.2/ Mr. Tript Singh is the signatory to the deed of guarantee dated 30.01.2021 and as he is a guarantor, who has duly signed the agreement, he is required to be referred to the arbitration.

The enquiry under Section 11 is very limited in nature. The court is only required to see whether there is an arbitration agreement and an arbitrable dispute has arisen between the parties. The court is also required to see whether the arbitration has been invoked as required under Section 21 of the Arbitration and Conciliation Act.

The scope of enquiry under Section 11 has been *inter-alia* held in the judgment ***M/S Duro Felguera, S.A. vs Gangavaram Port Limited*** (2017) 9 SCC 729 wherein the court *inter-alia* held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”



In the present case, it is not disputed that the deed of guarantee has been signed by both the respondents as the director of the borrower. The facility agreement is only an agreement between the borrower company and the lender. Respondent no.2 cannot be absolved merely because he is not the signatory to the facility agreement. The contention of the learned counsel for the respondent that simply because the claims have been admitted by the RP, therefore, the present proceedings cannot continue, does not hold any force. The petitioner as a lender is within its rights to institute the proceedings as provided under the law against the borrowers as well as the guarantor.

I consider that all the contentions being raised by the learned counsel for the respondents may be raised before the learned arbitrator in accordance with the law. Hence, the matter is referred to the arbitration. Justice M. L. Mehta, Former Judge of this Court is appointed as an arbitrator and the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, Justice M. L. Mehta, Former Judge of this Court is appointed as arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of



Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned arbitrator within two weeks from today.

The petition is disposed of in the above terms along with all pending I.As.

DINESH KUMAR SHARMA, J

JANUARY 15, 2024/rb*