



\$~7

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

+ **ARB.P. 495/2024**

M/S. CLIX CAPITAL SERVICES PVT. LTD.Petitioner

Through: Mr.Puneet Raj, Advocate

versus

SH. K.K. BIRLA & ORS.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 13.09.2024

1. The petitioner has filed the present petition, under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], for appointment of an arbitrator to adjudicate disputes between the parties under a Facility-Cum-Hypothecation Agreement dated 29.04.2019 ["FCHA"] and two undated Deeds of Guarantee. ["the Deeds"]
2. The FCHA was entered into between the petitioner and respondent No. 1, whereunder the petitioner advanced a loan to respondent No. 1. Respondent No. 3 is the proprietor of respondent No. 1 and respondent No. 4 is the wife of respondent No. 3, both of whom have executed the Deeds in favour of the petitioner, in connection with the same transaction. The FCHA [Clause 8.7] and the Deeds [Clause 10] contain arbitration clauses, which provide for adjudication of disputes by a sole arbitrator. Delhi has been designated as the venue of the arbitration proceedings.
3. Disputes having arisen between the parties, the petitioner invoked the arbitration clause by a communication dated 07.03.2024 and proposed the names of three arbitrators. However, no consent was received from



the respondents.

4. It is in these circumstances that the petitioner has filed the present petition under Section 11 of the Act.

5. Notice was issued to the respondents on 16.04.2024, but they have not entered appearance. Pursuant to an order dated 22.07.2024, the learned Joint Registrar has recorded that the respondent No.1 has been served by speed post on 20.08.2024, respondent No.2 has been served on the email address mentioned in the data base of Ministry of Corporate Affairs, Government of India and respondents No.3 and 4 have been served at the email addresses mentioned in schedule 1 of the details of guarantors in the loan agreement.

6. In view of the above, the petition is taken up for hearing.

7. In the present case, the FCHA and the Deeds have been executed between the petitioner described as “lender” and the respondent No. 1, 3 and 4 as “ borrowers/guarantors”, as mentioned in Schedule-I.

8. As the name of respondent No. 2 does not appear in the FCHA and the Deeds which contain arbitration clauses, Mr. Puneet Raj, learned counsel for the petitioner, was given an opportunity to take instructions as to whether the petitioner wishes to proceed against respondent No. 2 as well. He states, upon instructions, that respondent No. 2 may be dropped from the present proceedings without prejudice to any alternative remedy that the petitioner may have against respondent No. 2. It is so directed.

9. As far as respondent Nos. 1, 3 and 4 are concerned, it is *prima facie* clear that they are all parties to the agreements, and that arbitration agreements have been entered into between them. At the stage of proceedings under Section 11 of the Act, the Court is only required to



satisfy itself as to the *prima facie* existence of an arbitration clause in the agreement, all disputes of maintainability, arbitrability and on merits being left to the jurisdiction of the arbitral tribunal. The Supreme Court in its recent judgments of *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754] and *Cox & Kings Ltd. v. SAP India Pvt. Ltd. & Anr.* [Arbitration Petition No. 38/2020 dated 09.09.2024] has made this position clear.

10. In view of the above, the petition is allowed as against respondent Nos. 1, 3 and 4. The disputes are referred to arbitration of Mr. Avinash Kumar Trivedi, Advocate [Tel:- 9871441764]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

11. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

12. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent is to be served afresh, in accordance with DIAC Rules, in the arbitration proceedings.

13. Needless to say, all rights and contentions of the parties, including arbitrability, maintainability of the claims and on merits, are left open for adjudication by the learned Arbitrator.

14. The petition stands disposed of.

PRATEEK JALAN, J

SEPTEMBER 13, 2024//‘sv’/