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

+ **O.M.P.(I) (COMM.) 122/2024**

PANKAJ SARAN

..... Petitioner

Through: Mr. Gaurav Mitra, Mr. N.P.S
Chawla, Mr. Sujoy Datta, Mr.
Surekh Kant D., Mr. Aarshreya
Sharda & Mr. Asher Ravi,
Advocates.

versus

GENESIS FINANCE COMPANY LIMITED

..... Respondent

Through: Mr. Shubhanshu Gupta & Mr.
Hemant Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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25.04.2024

I.A. 8987/2024(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P.(I) (COMM.) 122/2024

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 [“the Act”] for an interim measure of protection in anticipation of arbitral proceedings between the parties. The relief sought by the petitioner is directed against a notice dated



03.04.2024 issued by the respondent invoking a Share Pledge Agreement dated 28.08.2019 [“Share Pledge Agreement”].

2. By way of this Share Pledge Agreement, the petitioner pledged certain shares in a company by the name of EMPI Innovation Park Pvt. Ltd. [“EMPI”] to the respondent in connection with a loan taken by EMPI from the respondent. According to the respondent, the petitioner was also a guarantor of the amounts advanced to EMPI under two loan agreements dated 28.08.2019, and 01.11.2019. The loan agreements also involved EMPI and other individual guarantors. There were also guarantees executed by the petitioner to secure the said loan.

3. Each of these documents contains an arbitration clause. In the Share Pledge Agreement, Clause 23.2 provides for resolution of disputes by an arbitration of a sole arbitrator to be appointed by the lender. New Delhi has been designated as the seat and venue of arbitration. In the course of arguments, learned counsel for the parties have taken instructions and agreed that the disputes between the parties and the respondent herein in respect of these transactions be referred to arbitration, and the present petition may be treated as an application under Section 17 of the Act before the learned arbitrator.

4. Having regard to the submissions and with the consent of learned counsel for the parties, the petition is disposed of with the following directions:

- a. The disputes between the parties are referred to arbitration of Hon’ble Ms. Justice Mukta Gupta, former Judge of this Court [Tel: 9650788600].
- b. The arbitration will be held under the aegis of Delhi International



Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”], and subject to the Rules of DIAC, including as to the remuneration of the learned arbitrator.

- c. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- d. The present petition will be treated as an application under Section 17 of the Act before the learned Arbitrator.
- e. The respondent may file its reply to the application within two weeks from today or immediately upon the learned Arbitrator entering into reference, whichever is later.
- f. The parties may request learned Arbitrator to consider the application under Section 17 of the Act at her earliest convenience, at least on the question of *ad interim* orders.
- g. It is made clear that claims and counter claims of the parties against each other may be placed before the learned Arbitrator. Mr. Shubhanshu Gupta, learned counsel for the respondent, asserts that the respondent wishes to raise counter claims under the loan agreement and the guarantee agreements as well. Mr. Gaurav Mitra, learned counsel for the petitioner, does not dispute that the petitioner is party to the guarantee agreement but disputes his status *vis-à-vis* the loan agreement. According to the petitioner, he was not the party to the loan agreement but signed it in his capacity as a guarantor and director of EMPI. The contention of the parties in this regard may also be placed before the learned Arbitrator for consideration.

5. It is made clear that this Court has not decided any of the



contentions of the parties, even on a *prima facie* basis. Their rights and contentions are reserved.

6. The petition stands disposed of with these directions.

PRATEEK JALAN, J

APRIL 25, 2024

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