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

+ **ARB.P. 619/2024**

ADITYA BIRLA FINANCE LIMITEDPetitioner

Through: Ms. Ashim Sood, Mr. Ekansh Gupta,
Mr. Prasad Dhande, Mr. Amit
Khairwar, Ms. Swati Chandan and
Mr. Divyae Patel, Advocates

versus

ARMAX HEALTH PRIVATE LIMITED & ORS.....Respondents

Through: Mr. S. Sethu Mahendran, Advocate
for R-2, R-3 & R-5

+ **O.M.P.(I) (COMM.) 28/2023 , I.A. 2084/2023**

ADITYA BIRLA FINANCE LIMITEDPetitioner

Through: Ms. Ashim Sood, Mr. Ekansh Gupta,
Mr. Prasad Dhande, Mr. Amit
Khairwar, Ms. Swati Chandan and
Mr. Divyae Patel, Advocates
Mr. S. Sethu Mahendran, Advocate
for Respondents No.2, 3 and 5

versus

ARMAX HEALTH PRIVATE LIMITED AND ORS.

.....Respondents

Through: Mr. S. Sethu Mahendran, Advocate
for R-2, R-3 & R-5

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

05.12.2024

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I.A. 10700/2024 (Exemption) in ARB.P. 619/2024

Allowed, subject to all just exceptions.

ARB.P. 619/2024

1. The present petition has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Facility Agreement dated 25.02.2021.
2. It is stated that the Petitioner is a Non-Banking Financial Institution which deals with the business of lending money. A Facility Agreement dated 25.02.2021 was entered into between the Petitioner and the Respondents. It is stated that Respondents No.2 to 5 have been described as co-borrowers in the Agreement and the main borrower is Respondent No.1 herein.
3. Material on record indicates that Respondents have defaulted in the manner of payment of money, resulting in disputes between the parties.
4. Clause 22 of the Facility Agreement dated 25.02.2021 contains an Arbitration Clause. The said Clause defines that jurisdiction would be with the Courts in the city of Delhi. Clause 22 of the Facility Agreement dated 25.02.2021 reads as under:-

***“22. GOVERNING LAW, JURISDICTION &
DISPUTE RESOLUTION***

Laws of India shall govern this Agreement, the security and other documentation pursuant hereto and Courts in the City of Delhi having exclusive jurisdiction over all aspects governing the interpretation and enforcement of this Agreement, the security and other documentation pursuant hereto. All claims or disputes arising out of or in relation to this Agreement shall be



settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall be filled only by Lender acting as the sole appointing authority.

The place of arbitration shall be Delhi or such other place as per Lender 's discretion. Parties agree that the courts in Delhi or such other courts as decided by Lender shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996... .. ”

5. Clause 25 of the Facility Agreement dated 25.02.2021 stipulates that the liability of the borrowers will be joint and several and the Schedule attached to the said Agreement describes Respondents No.2 to 5 as co-borrowers.
6. As far as Respondent No.1 is concerned, the proceedings under the Insolvency and Bankruptcy Code, 2016 have been initiated and Respondent No.1 has been admitted to insolvency on 21.06.2024.
7. In view of Section 14 of the IBC, no proceedings can be instituted or continued against any entity against which CIRP proceedings have commenced. However, in view of the fact that the liability of the other borrowers is joint and several, this Court is of the opinion that proceedings against other borrowers can be instituted and continued under the Loan Agreement.
8. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Facility Agreement dated 25.02.2021, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes



between the parties.

9. Accordingly, Justice Vineet Saran, Former Judge Supreme Court of India, (Mob. No. 7897420209) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a period of three weeks of entering on reference.

12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

O.M.P.(I) (COMM.) 28/2023

1. This Petition under Section 9 of the Arbitration Act has been filed by the Petitioner seeking appointment of the Court Receiver in respect of all the properties and assets of the Respondents and also for a direction to restrain the Respondent from selling, transferring, disposing of, or alienating or hypothecating or charging or parting with possession of or transferring or creating any right, title or interest or license in favour of anyone else in respect of the assets/properties, movable and immovable, that is secured to



the Petitioner.

2. This Court *vide* Order dated 03.02.2023 had directed the Respondents to file an affidavit disclosing their assets.

3. Be that as it may, in view of the fact this Court has appointed an Arbitrator, the present application be treated as one filed under Section 17 of the Arbitration and Conciliation Act, 1996 and the Ld. Arbitrator, within four weeks of entering reference, is directed to pass orders on the application.

4. Needless to state that when the Arbitrator will deal with the application under Section 17 of the Arbitration and Conciliation Act, he will take into account the orders passed under Section 9 of the Arbitration Act as well and the compliance thereof.

5. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 05, 2024

RJ