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

+ **ARB.P. 933/2023**

ADITYA BIRLA FINANCE LTD. Petitioner

Through: **Mr. Aman Vashisth, Adv.**

versus

RVD SALES PRIVATE LIMITED AND ORS Respondents

Through:

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER
15.01.2024**

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1. This is a petition seeking appointment of an Arbitrator to adjudicate disputes between the petitioner and the respondent.
2. The disputes arose out of a Facility Agreement dated 17.02.2021, wherein the petitioner had advanced money to respondent No. 1 which is the company, respondent No. 2 is the Director of respondent No. 1 company and respondent No. 3 is the personal guarantor and had executed a Deed of Guarantee covering the loan facility granted by the petitioner to respondent Nos. 1 and 2.
3. Clause 25 of the Deed of Guarantee dated 17.02.2021 contained the arbitration clause. The Facility Agreement also contained the arbitration clause, which reads as under:



“10.8. DISPUTE RESOLUTION

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 the Lender. All parties to this Agreement hereby expressly consent to the Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by the Lender acting as the sole appointing authority. The place of arbitration shall be Delhi, Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Lender changes or in the event of the law being made or amended so as to bring the Lender under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to Lender proceed to recover dues from the Seller under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Lender, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Lender such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Lender exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Lender nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

4. Since the disputes arise out of the Facility Agreement, as the petitioner had advanced loan to respondent No. 1 to the tune of ₹ 2 crores and since respondent Nos. 2 and 3 had executed personal guarantee and the Deed of Guarantee also contained arbitration clause, and since the payments



have not been made, the present arbitration petition has been filed.

5. The petitioner invoked arbitration *vide* legal notice dated 24.03.2023.

6. The respondents were directed to be served.

7. Mr. Vashisth, learned counsel for the petitioner has taken me through the service report, wherein respondent Nos. 1, 2 and 3 have refused to accept summons/notice on 29.11.2023.

8. For the said reasons, the respondents are deemed to be served in view of the Arbitration Agreement and since there is dispute between the parties, the application is allowed and disposed of with the following directions:

- i) Mr. Bhupendra Kumar Sood, Sr. Adv. (Mob. No. 9810084153) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) 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.



- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

JANUARY 15, 2024/DM

Click here to check corrigendum, if any