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

+ **ARB.P. 1111/2023, I.A. 21064/2023**

UGRO CAPITAL LIMITED

..... Petitioner

Through: Mr. Aditya Prasad, Adv. (VC).

versus

SWASTIK MEDICAL AGENCIES & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

29.04.2024

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1. By way of the present petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties had entered into a Facility Agreement dated 31.08.2022, which provides that disputes with respect to the agreement shall be resolved through arbitration as per provisions of the A&C Act. It further provides that the place of arbitration would be at New Delhi.
3. Vide this agreement, the petitioner sanctioned a loan of Rupees Ten Lakhs Twenty Thousand only vide sanction letter dated 31.08.2022, and respondent Nos. 2 and 3 are the guarantors. Since there is a default in the repayment of the loan, the loan was recalled vide notice dated



20.10.2022.

4. The petitioner issued notice invoking arbitration vide notice under Section 21 of the A&C Act dated 09.12.2022.
5. Notice was duly served upon the respondents at the same address given in the petition. The respondents vide communication dated 09.12.2022 denied for the online dispute resolution and also stated that a valid arbitration clause does not exist between the parties.
6. Thereafter again arbitration was invoked vide notice under Section 21 of the A&C Act dated 05.01.2023
7. There is also communication from the respondent dated 10.01.2023. However, it seems to be only stating about the earlier notice dated 09.12.2022.
8. Vide the reply to the notice dated 05.01.2023 he respondent disputed the validity of arbitration. Thereafter, the petitioner again sent a notice dated 25.01.2023 and proposed the names of three neutral arbitrators.
9. The respondents responded to this vide reply dated 01.02.2023 and did not confirm to the names proposed by the petitioner. However, the respondent proposed three different names for appointment as an arbitrator. The petitioner responded to this vide notice dated 13.02.2023.
10. The notice of the present petition was sent and the perusal of the record indicates that respondent Nos. 1 and 2 have refused to receive the notice.
11. As per the office report, Swastik Medical Agencies and Mr. Sharad Pandey refused to receive the notice. The notice sent to the third respondent also could not be served as the address was not located



being incomplete.

12. Learned counsel for the petitioner has also filed an affidavit of service.
13. It seems that respondents are not interested in contesting the petition and the fact that the respondents themselves vide notice dated 01.01.2023 have proposed three names to be appointed as arbitrators shows that there is an agreement that contains the arbitration clause. The claim amount is stated to be around Rupees Ten Lakhs Thirty-Nine Thousand Only.
14. In view of the above, 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, DIAC shall nominate an 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 fee rules of the DIAC Schedule 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.
15. The petition along with the pending application is disposed of in the above terms.

APRIL 29, 2024/AR..

DINESH KUMAR SHARMA, J