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

+ **ARB.P. 1099/2024**

ADITYA BIRLA FINANCE LIMITED

.....Petitioner

Through: Mr Mahip Datta, Mr Aman Vasisth and Mr Mann
Khare, Advs. (through VC)

versus

ANA TRANSCOM PRIVATE LIMITED AND ORS

.....Respondents

Through: Mr Akshay Ringe and Mr Dhananjay Gupta, Advs.
for R-1, R-5 and R-7.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.10.2024

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.

2. The respondents availed a credit facility to the tune of Rs. 3 crores for the purposes of execution of on-going and on hand projects *vide* Sanction Letter dated 24.08.2017. The said financial facilities were renewed *vide* Sanction Letter 28.05.2021 wherein an amount of Rs. 3.55 crores were extended by the petitioner to the respondents. The Sanction Letter was further revised by the petitioner in favour of the respondents *vide* amendment letter dated 11.06.2021 wherein an amount of Rs. 4.10 crores were extended to the respondents. Various loan documents were executed including creation of equitable mortgage.

3. Since the respondents defaulted in repayment of the loan, the



petitioner issued Demand Notice dated 10.03.2023 under section 13(2) of the SARFAESI and also initiated SARFAESI proceedings.

4. The arbitration clause is Clause 25.17 of the Facility Agreement dated 15.06.2021 which reads as under:-

“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”

5. As the amounts were due and payable, the petitioner invoked arbitration *vide* legal notice dated 23.01.2024. Hence the present petition.

6. Admittedly, the respondent No.1 is the principal borrower and all the other respondents are the co-borrowers.

7. It is stated by Mr Khare, learned counsel for the petitioner that the petitioner is not a financial institution and cannot initiate proceedings under The Recovery of Debts and Bankruptcy Act, 1993 and hence the present petition is maintainable.

8. In this view of the matter, learned counsel for respondent Nos. 1, 5 and 7 has no objection to the appointment of an Arbitrator for adjudication



of disputes between the parties.

9. As per service report, respondent Nos. 2, 3, 4 and 6 are served. Despite service, there is nobody appearing on their behalf.

10. For the said reasons and in view of no objection by the respondents, the present petition is allowed and the following directions are issued:-

- i) Justice Rajiv Shakdher (Retd. Chief Justice of High Court of Himachal Pradesh) (Mob. No. 9717495004) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The fees of the learned Arbitrator shall be in accordance with DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration and Conciliation Act, 1996 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/counter-claims and 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.

11. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 21, 2024/sr [Click here to check corrigendum, if any](#)