



2024:DHC:5658



\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1240/2023**
ADITYA BIRLA FINANCE LIMITEDPetitioner
Through: **Mr. Nishant Srivastav, Adv.**

versus

SANTANU DEY AND ORSRespondents
Through: **None**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

30.07.2024

%

1. On the last date of hearing, i.e. 15 July 2024, the matter was passed over once at request of learned Counsel for the respondents. There was no appearance on behalf of the respondents at second call, as a result of which the matter had to be adjourned for today.

2. Today, the matter has been called out twice. Though learned Counsel for the petitioner is present, there is no appearance on behalf of the respondents.

3. The respondents have also not condescended to file any reply to this petition.

4. Accordingly, I have proceeded to hear Mr. Srivastav, learned Counsel for the petitioner.



2024:DHC:5658



5. The dispute arises in the context of a facility agreement dated 22 October 2021, whereunder financial facilities were extended by the petitioner to the Respondents 1 and 2.

6. The agreement envisages, in Clause 32.17, resolution of dispute by arbitration. Clause 32.17, to the extent it is relevant, reads thus:

“32.17 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 also be filled only by 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.”

7. Respondent 3 stood guarantee for the facilities extended by the petitioner to Respondents 1 and 2, in connection with which the deed of guarantee dated 22 October 2021 was executed between the petitioner and Respondent 3.

8. The deed of guarantee also contained the following clause, envisaging resolution of disputes by arbitration:

“25. That all claims or disputes arising out of or in relation to this Guarantee shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Guarantee hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be as mentioned in the Schedule I Part C hereinbelow. Parties agree that the courts as mentioned in the Schedule I Part C hereinbelow shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.”



2024:DHC:5658



9. Apropos certain facilities which were extended by the petitioner to Respondents 1 and 2, and which remained unpaid, the petitioner sought to invoke arbitration by notice dated 3 March 2023 under Section 21 of the Arbitration and Conciliation Act 1996. The claim of the petitioner against the respondents is to the tune of approximately ₹ 3.56 crores.

10. As the respondents did not condescend to reply to the Section 21 notice, the petitioner has approached this Court under Section 11(6) of the 1996 Act for appointment of an arbitrator.

11. As already noted, there is no response to the present petition despite repeated opportunities. The respondents have also chosen to remain absent.

12. In that view of the matter, the Court proceeds to exercise jurisdiction under Section 11(6) of the 1996 Act, as a *prima facie* arbitrable dispute exists between the parties, and an arbitration clause, conferring jurisdiction on this Court exists both in the facility agreement as well as in the deed of guarantee.

13. Accordingly, this Court appoints Mr. John Joseph, Adv. (Mob: 9868174934) as the arbitrator to arbitrate on the dispute between the parties.

14. The fees of the learned Arbitrator shall be fixed by the learned Arbitrator in consultation with the parties.



2024:DHC:5658



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

16. This Court has expressed no view on either preliminary or on the merits of the dispute between the parties. All issues of fact and law shall remain open to be argued before the learned Arbitrator.

17. This petition is allowed to the aforesaid extent.

C.HARI SHANKAR, J

JULY 30, 2024

dsn

Click here to check corrigendum, if any