



2024:DHC:8172



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

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Date of Decision : 21.10.2024+ **ARB.P. 1444/2024****KOTAK MAHINDRA PRIME LIMITED**

.....Petitioner

Through: Mr. Balvinder S. Mauji, Adv. and Ms.
Richa Tuteja, AR of petitioner.

versus

MANAV SETHI & ANR.

.....Respondents

Through: Ms. Anu Monga, Mr. Rahul Goel and
Mr. Shobhit Sharma, Advs.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Loan Agreement bearing No.CF12450678 dated 30.12.2015. Under the said agreement, the respondent no.1 is the borrower whereas the respondent no.2 is the co-borrower.
3. A copy of the original agreement, bearing the signatures of the respondents has been produced in Court and the same has also been perused by the learned counsel for the respondents. Learned counsel for the petitioner undertakes to provide a legible copy thereof to learned counsel for the respondents during the course of the day.
4. The relevant Arbitration Clause is contained in Clause-31 of the said



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agreement. The same reads as under:

“31.Arbitration

All disputes, differences and/or claim arising out of these presents in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the arbitration of a sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be conducted in English language and held at the place more particularly mentioned in the Schedule IV of the present agreement hereunder.”

5. In terms of Schedule-1 read with Schedule-4 of the said agreement, the seat of arbitration is Delhi.
6. Disputes having been arisen between the parties, a Loan Recall Notice dated 04.10.2016 was sent by the petitioner to the respondent. No response thereto was sent by the respondents. Subsequently, a notice under Section 21 of the A&C Act dated 15.07.2024 was sent by the respondents. In response, the respondents did not dispute the existence of the arbitration agreement, however, certain other allegations were made, including that the claims sought to be raised were hopelessly barred by limitation.
7. During the course of hearing, learned counsel for the respondents does not dispute the existence of the arbitration agreement, and accedes to appointment of a sole arbitrator to adjudicate the dispute between the parties. However, she submits that jurisdictional objections raised by the respondents be decided at the outset by the learned sole arbitrator before adjudication of the disputes on merits. The said suggestion is not opposed by



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learned counsel for the petitioner.

8. Considering the aforesaid, with the consent of the parties, Ms. Vasundhara Bakhru, Advocate (Mob. No.: +919873033384) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Further, as agreed by respective counsel, it is directed that the jurisdictional objections as may be raised by the respondents, including the issue as to whether the claim/s sought to be raised are beyond the period of limitation, be decided by the learned Sole Arbitrator at the very outset, before adjudication of the disputes on merits.

9. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

10. It is further agreed between the parties that the arbitration shall be conducted under the aegis of, and as per rules of the Delhi International Arbitration Centre (DIAC). It is ordered accordingly. Let a copy of this order be communicated to the Organiser, DIAC.

11. 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.

12. Nothing in this order shall be construed as an expression of opinion on the merits of the respective contentions/claims of the parties.

13. The petition is disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 21, 2024/cl