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

+ **ARB.P. 1815/2024**

AXIS FINANCE LIMITED

.....Petitioner

Through: **Mr. Shubham Mahajan, Advocate**

versus

SATHISH G AND ANR

.....Respondents

Through: **None**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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12.12.2024

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act of 1996'), has been filed by the Petitioner, thereby, seeking appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.

2. It is stated in the petition that the disputes between the parties have arisen with respect to a loan advanced by the petitioner to the respondents under the Loan Agreement dated 28.11.2022. It is stated that the said Loan Agreement contains an arbitration agreement at Clause 14, which reads as under:

“(i) All disputes, differences and/or claim or questions arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof, of a



sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator to be a sole arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be held Mumbai/Delhi.

(ii) Notwithstanding anything to the contrary contained herein, any dispute, controversy or claim arising out of or relating to this contract, including its construction, meaning, scope or validity thereof, shall be resolved and settled by arbitration under the Arbitration and Conciliation Act, 1996 (as amended) which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules (“Rules”).

(iii) The parties consent to carry out the aforesaid proceedings electronically via the email addresses and / or mobile numbers as per Axis Finance records, updated from time to time.

(iv) The parties agree that the aforesaid proceedings shall be carried out by a sole arbitrator appointed under the Rules. The juridical seat of arbitration shall be Delhi/Mumbai, India and the aforesaid proceedings shall be subject to the exclusive jurisdiction of the competent courts in Delhi/Mumbai, India. The language of arbitration shall be English. The law governing the arbitration proceedings shall be Indian law. The decision of the arbitrator shall be final and binding on the parties.

(Emphasis Supplied)

3. Learned counsel for the Petitioner states that Respondent Nos. 1 and 2 have been duly served through speed post. She states that affidavit of proof of service dated 10.12.2024 have been placed on record along with speed post and the tracking report which reflects that the items have been duly delivered to the addressee.

4. She states that in addition, to the service through speed post, Respondent Nos. 1 and 2 were also served on the e-mail address registered with the Petitioner. She states that an additional affidavit of service



including the proof of service through e-mail shall also be placed on record within a period of one (1) week.

5. The Registry as well has reported that notices sent by the Registry at the e-mail addresses given in the memo of parties have been duly served on the Respondents.

6. This Court has perused the report of the Registry, affidavit of service and the tracking report annexed thereto. In view of the same this Court is satisfied that the Respondents have been served. However, none appears on behalf of the Respondents.

7. Learned counsel for the petitioner states that the claimed amount is Rs.26,88,405/-. She states that she has no objection if the arbitration is conducted under the aegis of the Delhi International Arbitration Centre ('DIAC').

8. In view of the law settled by the judgments of the Supreme Court in **TRF Limited v. Energo Engineering Projects Limited**¹ and **Perkins Eastman Architects DPC & Anr. V. HSCC (India) Limited**², and other judgments following them, the contractual provision for unilateral appointment of an arbitrator is impermissible. This Court is, therefore, of the view that the Petitioner has made out a case for appointment of an arbitrator, and all rights and contentions of the parties on merits may be left open for adjudication by the learned Arbitrator.

9. Accordingly, the disputes between the parties under the said agreement are referred to the Arbitral Tribunal with the following directions:

a) Mr. Abhimanyu Garg, Advocate (D-2206/2010) (Mob.

¹ (2017) 8 SCC 377

² (2020) 20 SCC 760



No.9811092113; E-mail: abhimanyu.legal@gmail.com) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

- b) The arbitration will be held under the aegis of the DIAC. The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the Act of 1996 or as the parties may agree.
- c) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.
- d) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, 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.

10. With the aforesaid directions, the petition stands disposed of.

11. The registry is directed to send a copy of this order to DIAC and the Sole Arbitrator.

12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2024/Sv/rhc/MG

[Click here to check corrigendum, if any](#)