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

+ **ARB.P. 295/2025**

ADITYA BIRLA FINANCE LIMITED

.....Petitioner

Through: Mr. Puneet Singh Bindra, Ms. Charu Modi, Ms. Kriti Dang and Mr. Rishabh Gupta, Advs.

versus

MS BODYSCULPT HEALTH CLUB PRIVATE LIMITED AND

ORS

.....Respondents

Through: Mr. Nilesh Sharma, Mr. Joseph Pookkatt and Mr. Dhawesh Pahuja, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

19.05.2025

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1. This a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties arising out of Term Loan Agreement dated 09.11.2019.
2. In pursuant to the said Agreement, the petitioner advanced a loan of 6,50,00,000/- to the respondents nos. 1 to 3 where respondent no. 1 is the principal borrower and respondent nos. 2 and 3 are co-borrowers. Respondent Nos. 4 to 7 are personal guarantors.
3. The said term loan agreement contains an arbitration clause, being



Clause No. 32.17, which reads as under:

“32.17 Arbitration:

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 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..

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, tis the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

4. The respondent nos. 4 to 7 signed the Deed of Guarantee Agreement



dated 09.11.2019 which also contains arbitration clause being Clause no.25 which reads as under:

“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 & Conciliation 1996.”

5. Subsequently Deed of Hypothecation Agreement was also signed on the same date i.e. 09.11.2019. Moreover, there was other security documents executed between the parties.

6. On 27.09.2021, the facility agreement was executed between the petitioner and the respondent nos. 1 to 3 which also contains arbitration clause as attached below.

“All claims or disputes arising out of or in relation to this agreement shall be settled by arbitration. The arbitraiton triubnal 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 Deihi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.



Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the “DRT Act”), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement.”

7. Subsequently, the credit facility was restructured between the parties. The respondents however defaulted in making payments.
8. On 02.12.2024, the demand notice under SARFAESI was issued to the respondents by the petitioner. On the same date i.e. 02.12.2024, the petitioner issued notice invoking arbitration and thereafter, the present petition was filed.
9. Mr. Bindra, the learned counsel appearing for the petitioner states that the petitioner is not notified as financial institution under Recovery of Debts and Bankruptcy Act, 1993. Reliance is placed on the judgement dated 19.03.2024 of this Hon’ble Court in “Aditya Birla Finance Limited vs. Anjali



Nag & Ors.”

10. Mr. Bindra further states that Aditya Birla Finance is merged with Aditya Birla Capital Ltd. and hence the name of the petitioner may be read as Aditya Birla Capital Limited.

11. The parties in the present matter are at consensus that the arbitrator may be appointed but the respondents may be given some time to settle the matter with the petitioner.

12. For the said reasons, the 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 arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
- 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/counter-claims and 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.”
13. Before the appointed Arbitrator enters reference, the parties are free to settle the matter.
 14. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MAY 19, 2025/ssc

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