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

+ **ARB.P. 1186/2024**

RED FORT CAPITAL FINANCE COMPANY PRIVATE LIMITED

.....Petitioner

Through: Ms. Mani Gupta, Mr. Aman
Choudhary, Mr. Akshat Goyal
(Advocates)

versus

DATABIT TECHNOLOGIES PRIVATE LIMITED & ORS.

.....Respondents

Through: Mr. Ram Avtar Sharma Advocate for
Respondent 1 to 3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

24.01.2025

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1. The Petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties under the Facility Agreement dated 19.10.2022.

2. It is stated that the Respondent No.1 through Respondent Nos.2 and 3 approached the Petitioner for a finance facility of Rs.2,40,00,000/-. It is stated that the said loan was advanced to the Respondent. It is stated that there was a repeated default in the payment of money because of which on 25.04.2023, the Petitioner recalled the Facility Agreement dated 19.10.2022 and informed the Respondent No.1 that a sum of Rs.2,65,74,865/- as on



25.04.2023 was due and payable. It is stated that on 01.12.2023 personal guarantees and corporate guarantees of the Respondent No.1 as per the procedure has also been invoked. It is stated that the Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before this Court being OMP (I) (COMM) No.66/2024 in which notice has been issued.

3. Clause 26 of the Facility Agreement dated 19.10.2022 contains an Arbitration Clause, which reads as under:-

“26. ARBITRATION

Any dispute or difference or claims that arises between the Parties or any of them concerning the Loan/Facility Documents or any condition herein contained or as to the rights, duties or liabilities of Parties hereto or any of them either during the continuance of the Loan/Transaction Documents or after termination or purported termination hereof shall be referred to the sole arbitrator to be appointed by the Lender. In the event the Sole Arbitrator by any reason doesn't attend the dispute, the matter shall be referred to the panel of 3 arbitrators to be appointed in accordance with the Arbitration and Conciliation Act, 1996. The venue of the arbitration shall be at Delhi at the sole discretion of the Lender and the arbitration proceedings shall be conducted in English language. The parties agree and confirm that the arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. It is agreed between the Parties, hereto that nothing contained in Section 17 of Arbitration & Conciliation Act, 1996, shall in any way, affect the right of any of Lender or preclude the Parties Lender to/from seek/seeking such interim reliefs in any Court of competent jurisdiction, including interim



relief under section 9 of the Arbitration & Conciliation Act 1996, and the rules framed thereunder. The award of the Arbitrator shall be a written award and shall be final, conclusive & binding on all the Parties whether on question of law or of fact. Notwithstanding anything contained hereinabove, in the event of any law being made or amended so as to bring Lender under the SARFESI Act or the DRT Act, or any other special legislation to enable Lender to enforce the security under the SARFAESI Act or proceed to recover dues from the Borrower and/or Obligors under the DRT Act, Lender shall be entitled at its sole discretion to initiate such additional parallel actions as it deems fit.”

4. Clause 25 of the Facility Agreement dated 19.10.2022 contains a jurisdiction Clause. Reading of the said Clause indicates that only the Courts and tribunals of competent jurisdiction at Delhi, India shall have exclusive jurisdiction with respect to any suit, action or any other proceedings relating to this Agreement.
5. Notice in the petition was issued on 06.08.2024.
6. Mr. Ram Avtar Sharma, learned Counsel appears on behalf of Respondents No.1 to 3.
7. The Office report indicates that Respondents No.4 and 5 have refused to accept the notice which means they have been deemed to be served.
8. Since the disputes have arisen between the parties and the Facility Agreement dated 19.10.2022 contains an Arbitration Clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes which have arisen between the parties.
9. Accordingly, Mr. Abhilash Mathur, Adv. (Mob. No. 9811041536) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the



parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

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

12. 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.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 24, 2025

RJ