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

\+ ARB.P. 1092/2025

AXIS FINANCE LIMITED .....Petitioner

Through: Mr. Ankush Bhardwaj and Mr. Shikhar Gupta, Advocates.

versus

P S BASAVARAJAPPA & ANR. .....Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **17.10.2025**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. On 09.10.2025, there was no appearance on behalf of the Respondents despite service but in the interest of justice, adverse orders were deferred and matter was adjourned for today, making it clear that if the Respondents were unrepresented, they will be set *ex parte*. None appears for the Respondents even today. It appears that Respondents are not interested in contesting the present petition and are set *ex parte*.

3. Disputes between the parties arise out of a Loan Agreement dated 18.08.2023 whereby a sum of Rs.31,31,109/- was sanctioned to the Respondents by the Petitioner. Petitioner asserts that Respondents started defaulting in repayment of the loan instalments and loan recall notice was issued on 09.06.2025. Due to continued default by the Respondents and

there being an arbitration clause in the Loan Agreement, Petitioner sent a notice invoking arbitration dated 18.06.2025 calling upon the Respondents to pay the outstanding amount or consent to appointment of an Arbitrator, but there was no response and on failure of the Respondents, this petition was filed. Arbitration Clause 19 is extracted hereunder for ease of reference:-

> *"**19. Arbitration***
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> *i. All and any dispute/s, differences arising out of or in connection with this Agreement and/or Facility Documents and the Schedule of the Terms attached thereto, controversy or claim arising out of or relating to this Agreement and Facility Documents, including its construction, meaning, scope or validity thereof, or compliance with the provisions of the Facility Documents shall be resolved and settled, by arbitration only in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereto and shall be referred to either a Sole Arbitrator to be appointed by the Lender out of the panel of Arbitrators or shall be referred to an Arbitration Centre, an independent institution, appointed by the Lender and the Parties shall be at liberty to select the Arbitrator from the panel of the Arbitrators of Lender or the Arbitration Centre.*
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> *ii. Borrower agrees that in the event of any dispute, differences arising out of or in connection in any of the Facility Documents (such as any personal guarantees executed by the Borrower / Personal Guarantors and/or any Corporate Guarantees, Deed of Hypothecation etc.) including any additional documents executed by the Borrower or any additional facility / top-up / ad-hoc facility taken by the Borrower from the Lender herein such disputes shall be treated as a single reference to the Arbitrator.*
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> *iii. Lender shall address a notice to the Borrower suggesting the names of not more than three (3) Arbitrators. Borrower shall either: a) Confirm in writing acceptance of any one amongst the propose names as the Sole Arbitrator to the Lender within a period of 7 days from the date of notice; b) Convey its objection, if any, in writing to the Lender against the proposed names of the Sole Arbitrator within the aforesaid period of 7 days.*
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> *iv. However, if the Lender does not receive any response from the Borrower within the aforesaid period of 7 days, the Lender shall be entitled to nominate any one person from amongst the propose three names as the Sole Arbitrator and such Arbitrator shall be treated as Arbitrator appointed by mutually by the parties.*

v. Borrower has given his/her/its consent for either appointment of sole Arbitrator or arbitration to be conducted by the Arbitration Centre, more particularly mentioned in Annexure I to this Agreement.

vi. The seat for such Arbitration shall be Mumbai and/or Delhi, as may be determined by the Lender and which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules ("Rules") of the Independent Arbitration Centre. The costs of such arbitration shall be borne by the Borrower(s). The language of the arbitration proceedings shall be English. The award, including interim award given by the Arbitrator shall be final and binding upon all the parties to this Agreement and also the Facility Documents. The provisions of this Clause shall continue to be in force in respect of any question, dispute or claim as mentioned in this Clause notwithstanding the repayment of all dues under the Facility.

vii. The parties agree to have their disputes resolved by Fast Track procedure as specified in section 29B of the Arbitration and Conciliation Act, subject to and in accordance with, the procedure which the Arbitrator may lay down from time to time to conduct Arbitration proceedings and the Sole Arbitrator or the Arbitration Centre shall conduct Arbitration Proceedings in such manner as he/it may deem appropriate as per section 29B of the said Act.

viii. If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys' fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award. The provision of arbitration clause contained herein shall continue in force in respect of any question, dispute or claim as mentioned in clause above notwithstanding the repayment of Facility.

ix. The terms of Facility shall be governed by the Laws of India and shall be subject to the exclusive jurisdiction of courts and tribunals in Mumbai and/or Delhi.

x. Borrower(s) hereby expressly acknowledges, agrees, confirms and admits that the Borrower(s) has fully read, verified, understood and irrevocably agreed to and accepted and delivered all the terms, conditions and provisions contained herein and the Schedule of Terms of Facility by signing this Agreement.

xi. Borrower(s) has executed this Arbitration Agreement with full knowledge and understanding of the obligations herein willingly undertaken, agreed and accepted and/or the Borrower(s) agrees that the complete terms and conditions of the terms of Facility have been explained in English or the vernacular language understood by the Borrower(s).

xii In the event of death, refusal, neglect, inability or incapability of the

> *person so appointed to act as an Arbitrator the Lender may appoint a new Arbitrator.*"

4. In light of the judgment of the Supreme Court in ***SBI General Insurance Company Limited v. Krish Spinning, 2024 SCC OnLine SC 1754***, Court finds no impediment in appointing an Arbitrator, there being an arbitration clause envisaging reference of disputes arising from the loan facility to arbitration. Accordingly, Co-ordinator, Delhi International Arbitration Centre ('DIAC') is directed to take steps for appointment of the Sole Arbitrator. Arbitral proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules, 2018.

5. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

6. It is made clear that Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

7. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 17, 2025/RW