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

+ **ARB.P. 1875/2024**

AXIS FINANCE LIMITED

.....Petitioner

Through: Mr. Vivek Malik and Mr. Vivek Sinha,
Advocates (through VC).

versus

YOGESH KUMAR & ORS.

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **18.02.2025**

1. Notices have been issued to respondents.
2. Respondents have been served, as per service report. However, no one appears on behalf of respondents.
3. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('**A&C Act**') seeking appointment of the Sole Arbitrator for the adjudication of disputes between the parties arising out of the '*Facility Agreement*' dated 10th July 2019, executed between the parties.
4. **It is stated that the arbitration clause is contained in Clause 28 of the said agreement. The arbitration clause reads as under:**

"28. JURISDICTION & DISPUTE RESOLUTION

(a) 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, to settle any disputes, which may arise out of, or in connection with, this Indenture and that accordingly, any legal action, suit or proceedings arising out of, or in connection with, the Terms of Facility may be brought in those courts and tribunals and the Borrower



irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts and tribunals.

(b) Nothing contained in this Clause shall limit any right of the Lender to take any proceedings in any court or tribunal of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not and the Borrower irrevocably submits to, and accepts, generally and unconditionally, the jurisdiction of such court and tribunals, and the Borrower irrevocably waives any objection it may have now or in the future on the ground of an inconvenient forum.

(c) Notwithstanding sub-clause (a) above, the Lender may, at its option, choose to settle any disputes which may arise out of or in connection with this Agreement by referring the same to arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 as amended from time to time. The arbitral tribunal shall comprise of a sole arbitrator appointed by the Lender. The arbitration shall be held at Mumbai and / or Delhi, as may be determined by the Lender and the proceedings of such arbitration shall be conducted in English. The Parties hereby agree that the decision of the arbitrators shall be final and binding. The Parties hereby also agree that the cost of the arbitration proceeding shall be borne by the parties in accordance with the directions of the Arbitrator.

(d) Without prejudice to the generality of the clause, the lender shall have the right to seek remedies under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as applicable, and/or the Recovery of Debts and Bankruptcy Act, 1993 (DRT Act) in the event the legal status of the Lender changes or the law is amended or made to enable the Lender to proceed to recover dues from the Borrower under the DRT Act, in relation to its rights under the Finance Documents. Provided, however, that neither any such change in legal status of Lender nor change in law referred to hereinabove, shall invalidate an existing award passed by the arbitral tribunal pursuant to sub-clause (b) above.”

5. Since, there were disputes between the parties, petitioner invoked arbitration vide notice dated 17th September 2024.

6. It is stated that despite petitioner's request, the respondents did not



consent to appointment of the Sole Arbitrator, as per the aforementioned Clause.

7. The Supreme Court in ***Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.***(2012) 10 SCC 752 and ***Suprema Inc. v. 4G Identity Solutions (P) Ltd.*** (2015) 13 SCC 122, and this Court in, ***Energy Efficient Services Ltd. v. Merry Gold Enterprises*** 2023 SCC OnLine Del 2365 and ***Aditya Birla Finance Ltd. v. Anjali Nag*** 2024 SCC OnLine Del 2568, in similar situations, where the respondents did not appear before the Courts despite issuance of notice and service being affected upon them , proceeded *ex-parte* against such respondents and appointed the arbitrator.

8. Upon a conspectus of the averments contained in the petition and the submissions made, this Court is of the opinion that there is a valid and subsisting arbitration agreement between the parties, within the territorial jurisdiction of this Court, the disputes stated to have arisen between the parties do not appear *ex facie* to be non-arbitrable.

9. Considering the aforesaid, the petition is allowed. The following directions are issued:

- i) **Mr. Dhruv Tamta**, Advocate (Mob. No. 9899989917) (Email – dhruvtamta@gmail.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (**‘DIAC’**). The remuneration of the Arbitrator shall be in terms of the Fourth Schedule of the A&C Act.
- iii) The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties,



including the arbitrability/maintainability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute by either of the parties are left open for adjudication by the Sole Arbitrator.

v) The parties shall approach the Sole Arbitrator within two weeks from today.

10. The petition is disposed of.

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 18, 2025/ak/na/kp