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

+ **ARB.P. 1877/2024**

AXIS FINANCE LIMITED

.....Petitioner

Through: Mr. Vivek Malik, Advocate with Mr.
Vivek Sinaha and Mr. S Shubham,
Advocates (Through VC)

versus

HANUMAN JAJRA & ANR.

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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17.03.2025

1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of an Arbitrator in terms of the Facility Agreement dated 11.10.2022 executed between the parties. It is stated that the said Facility Agreement dated 11.10.2022 contains an Arbitration Agreement at Clause 29, which reads as under:

"29. JURISDICTION & DISPUTE RESOLUTION

.....

(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 Borrower.

(d) 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”).

.....

(f) 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)

2. It is stated that the Petitioner in the year 2022 at the request of the Respondents/borrowers granted the financial facilities to them vide the Facility Agreement dated 11.10.2022 (‘the agreement’).

2.1. It is stated that the Petitioner sanctioned and disbursed a sum of Rs. 10,19,000/- in favour of the Respondents, which was to be re-paid by the Respondents in a span of 15 years on Equated Monthly Installments (EMIs) basis. It is stated that Respondents had undertaken to pay EMI of Rs. 11,423/- on 5th of every month along with the interest applicable as per the agreement.

2.2. It is stated that Respondents defaulted in the timely payment of the EMIs, the Petitioner issued notice of default and invocation of Arbitration (under Clause 29 of the agreement) dated 17.09.2024, thereby seeking Respondents’ consent for appointment of an arbitrator for resolution of the disputes. It is stated that despite service the Respondents have failed to reply to the said notice.

2.3. It is stated that the Respondents are jointly and severally liable to pay a sum of Rs. 10,58,147/- towards principal, interest, and penal interest and other charges dues as on 26.07.2024.



2.4. It is stated that the as per the agreement and the Arbitration Clause therein, arbitration proceedings were agreed to be held in Delhi.

Arguments of the Petitioner

3. Learned counsel for the Petitioner states that the service in this petition on the Respondents has been duly affected and the affidavit of service has also been filed.

3.1. He states that the completion of service has been recorded in the previous order dated 21.02.2025.

3.2. He states that on the last date of hearing, the predecessor Bench has raised a query with regard to the territorial jurisdiction of this Court in view of the observation that the loan agreement has been executed at Rajasthan and Respondents are also resident of Rajasthan.

3.3. He clarifies that the said observation has crept in erroneously. He submits that a perusal of the Facility Agreement dated 11.10.2022 would show that it was executed at Delhi. He refers to the stamp paper on which the Agreement has been drawn to show it has been issued by GNCTD and page '1' of the agreement, which records the location of execution of agreement, as Delhi. In this regard, he also relies upon the disbursement letter dated 11.10.2022, which bears Petitioner's branch address at Delhi.

3.4. He states that the quantum of amount, which is subject matter of dispute is approximately Rs. 10 lakhs i.e., the amount, which was outstanding as on the date of filing of the petition.

3.5. He states that the Petitioner prays that the matter be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and an Advocate be appointed as an Arbitrator considering the value of the claim amount involved.



Decision

4. Notice in the present petition was issued on 27.11.2024 and the Respondents were directed to file their reply, which has not been filed. Due service on the Respondent is duly recorded in the order dated 21.02.2025. However, none has appeared on behalf of the Respondent today as well.

5. Upon perusal of the Facility Agreement, this Court is satisfied that the said agreement has been executed at Delhi between the parties and further the request for disbursement addressed to the Delhi Branch of the Petitioner also substantiates the plea of the Petitioner that cause of action has arisen at Delhi.

6. A perusal of clause 29 of the Facility Agreement shows that there exists an arbitration agreement between the parties and the said clause has been duly invoked by the Petitioner by issuing notice invoking arbitration dated 17.09.2024.

7. In view of the aforesaid submissions considering the fact that the arbitration agreement forms part of the Facility Agreement and it is mentioned in the said arbitration agreement that a sole arbitrator is to be appointed for adjudication of the disputes, therefore the present petition is allowed with the following directions:

- (i) Mr. Farman Ali, Advocate (D-JK-365/2016) [Mobile No. 9469448888, E mail ID: 11farman11@gmail.com], who is present in Court, is appointed as Sole Arbitrator.
- (ii) The arbitration will be held under the aegis of the DIAC. The remuneration of the learned Sole Arbitrator shall be in terms of Schedule IV of the Act of 1996.
- (iii) The learned Sole Arbitrator is requested to furnish a declaration in



terms of Section 12 of the Act of 1996 before entering into the reference.

(iv) 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.

8. Learned counsel for the Petitioner states that the statement of claim will be duly filed within four (4) weeks.

9. List for preliminary hearing to be presided over by the learned sole Arbitrator on **15.05.2025**.

10. The DIAC is directed to issue fresh notice to the Respondents for the hearing dated 15.05.2025.

11. With the aforesaid direction, the petition stands disposed of.

12. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and the learned Sole Arbitrator.

13. 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

MARCH 17, 2025/rhc/sk