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

+ **ARB.P. 1994/2024**

AXIS FINANCE LTD

.....Petitioner

Through: Mr. Ankush Bhardwaj, Adv.

versus

V HARSHINI AND ANR

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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21.02.2025

1. Notices have been issued to respondents.
2. Though the service report is awaited, affidavit of service filed by petitioner states that respondents were served *via* E-mail.
3. Counsel for petitioner states that the location of '*Business Loan Agreement*' was at Delhi, as stated in the agreement, and as per Clause 35 of the Schedule II attached to the agreement, the seat for arbitration was to be Mumbai/Delhi and exclusive jurisdiction was conferred upon Courts at Mumbai/Delhi, which is as under:



35. ARBITRATION

- i. Any and all disputes, claims, differences arising out of or in connection with the Finance Documents and the Schedule(s) of Terms/Repayment Schedule(s) attached thereto or compliance with the provisions of the Finance Documents shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to a sole arbitrator to be appointed by the Lender. THE SEAT FOR SUCH ARBITRATION SHALL BE MUMBAI AND/OR DELHI, AS MAY BE DETERMINED BY THE LENDER. The costs of such arbitration shall be borne by the Borrower(s). The language of the arbitration proceedings shall be English. The award given by the arbitrator shall be final and binding upon all the parties to the Finance 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.
- ii. The final costs of such arbitration shall be borne by the losing party or otherwise as determined in the arbitration award. If a party is required 35. 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.
- iii. 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. 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(s) irrevocably submits to, and accepts, generally and unconditionally, the jurisdiction of such courts and tribunals, and the Borrower(s) irrevocably waives any objection it may have now or in the future on the ground of an inconvenient forum.
- iv. THE 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 THE FACILITY AGREEMENT.
- v. The Borrower(s) has executed the Facility 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).

4. For the said reasons, the petition is allowed and the following directions are issued:

- i) *Ms. Liza Baruah, Advocate (Mob. No. 9871516338)* 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 learned 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.
5. The petition is disposed of.
6. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 21, 2025/ak/kp