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

+ **ARB.P. 2031/2024**

AXIS FINANCE LIMITED

.....Petitioner

Through: Mr. Vivek Malik and Mr. Vivek
Sinaha, Advs.

versus

CHAPPAN BHOG & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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21.02.2025

1. Pursuant to notice issued, no one appears on behalf of respondents. The service report by the Registry states that the respondent Nos.1-3 were served through E-mail. Affidavit of service filed by the petitioner states that the service has been done by E-mail and has not bounced back.
2. Counsel for the petitioner states that respondents have also been served through speed-post.
3. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('A&C Act') seeking appointment the Sole Arbitrator arising out of the Facility Agreement dated 26th September 2023. Since there were disputes, petitioner invoked arbitration on 10th October 2024.
4. It is stated that the arbitration clause is contained in *Clause 51(6) and 51(9)* of the said agreement. The arbitration clause reads as under:



6. 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.
9. 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.

5. In addition, *Clause 51(6)* of the General Terms and Conditions states that the *seat* for Arbitration shall be in *Delhi/Mumbai* and *Clause 51(9)* states that the *jurisdiction* of the competent Courts will be in *Delhi/Mumbai*.

6. Counsel for the petitioner points out that the agreement was executed in *Delhi* as evident from the locations specified.

7. As per the invocation notice, a demand of *Rs.30 Lacs* along with interest has been made which has now ballooned up to a greater amount with passage of time, as per the counsel for the petitioner.

8. 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.

9. 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.

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

- i) *Ms. Mansi Sharma, Advocate* (Mob. No. 9910201722) 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 on 07th March 2025.

11. The petition is disposed of.

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

ANISH DAYAL, J

FEBRUARY 21, 2025/MK/tk/bp