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

+ **ARB.P. 2033/2024**

AXIS FINANCE LIMITED

.....Petitioner

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

versus

AMIT MAHLA & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

21.02.2025

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1. Pursuant to notice issued, no one appears on behalf of respondents. The service report by the Registry states that the respondents were served through email. Affidavit of service filed by the petitioner states that the service has been done by email and has not bounced back.
2. Counsel for the petitioner states that respondents have also 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 of the Sole Arbitrator arising out of the Facility Agreement dated 4th May 2022. Since there were disputes, the petitioner invoked arbitration on 8th October 2024.
4. It is stated that the arbitration clause is contained in *Clause 35* of the said agreement. The arbitration clause reads 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).

5. In addition, the Arbitration *Clause 35* specified that the *seat* for Arbitration shall be in *Delhi/Mumbai* and the *jurisdiction* of the competent Courts will be in *Delhi/Mumbai*, exclusively.

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

7. As per the invocation notice dated 08th October 2024, 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