



\$~2

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

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

AXIS FINANCE LIMITED

.....Petitioner

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

versus

JOSEPH KURIAN & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

%

21.02.2025

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 E-mail. Affidavit of service filed by the petitioner states that the petition was sent to the respondents via email on 08th February 2025, 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 of the Sole Arbitrator arising out of the Facility Agreement dated 22nd July 2022. Since there were disputes, the petitioner invoked arbitration on 10th October 2024.
4. It is stated that the arbitration clause is contained in *Clause 14 and 15* of the said agreement. The arbitration clause reads as under:



14. Arbitration:

(i) All disputes, differences and/or claim or questions arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof, of a sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator to be a sole arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be held Mumbai/Delhi.

(ii) 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").

(iii) The parties consent to carry out the aforesaid proceedings electronically via the email addresses and / or mobile numbers as per Axis Finance records, updated from time to time.

(iv) 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.

FOR AXIS FINANCE LIMITED

15. The Borrower irrevocably waives any objection now or in future, to the laying of the venue of any legal proceedings in the courts and tribunals at Delhi/Mumbai, and any claim that any such legal proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any legal proceedings brought in the courts and tribunals at Delhi/Mumbai, shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law."

5. Arbitration Clause 14 specified the seat of Arbitration to be Delhi/Mumbai and jurisdiction of competent Court 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.31,36,573/- 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 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