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

+ **ARB.P. 2081/2024**

M/S CLIX CAPITAL SERVICES PVT. LTD.Petitioner

Through: **Mr. Puneet Raj Banderwal, Mr. Ravi
Shankar Garg and Ms. Mamta Garg,
Advs.**

versus

DR. IFTEKHAR MUKHTAR AHMED & ANR.Respondents

Through: **Mr. Arvind Kumar, Dr. Geeta Oberoi,
Mr. Ankit Kumar Vats, Mr. Nikhil
Anand and Mr. Priyanshu Jaiswal,
Advs.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% 03.04.2025

I.A. 48941/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. Having heard learned counsel appearing for the parties, the Court finds that the petitioner-Company sanctioned the Medical Equipment Term Loan amounting to Rs.32,70,653/- *vide* sanction letter dated 30.04.2022. Pursuant to the sanction, Facility-Cum-Hypothecation Agreement along with the Deed of Guarantee dated 10.05.2022 were executed.
4. On account of non-adherence to the fiscal discipline agreed by the respondents, the petitioner-Company was constrained to terminate the loan facility *vide* the termination notice dated 22.11.2023. According to the termination notice, respondents were called upon to make the payment of an



outstanding amount of Rs.26,56,062.35/-.

5. Despite the notice of termination, the respondents did not make the payment. Thereafter, the petitioner-Company invoked proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) on 30.03.2024, and an interim order was passed by the Court of competent jurisdiction.

6. Subsequent thereto, a notice dated 19.11.2024, under Section 21 of the Act was issued to the respondents invoking arbitration.

7. On notice being issued, Mr. Arvind Kumar, learned counsel appearing for the respondents contends that the goods in question have already been seized. Therefore, it is contended by the learned counsel that the Court may not appoint the Arbitrator.

8. It may be noted that the aforesaid submissions would have no bearing on the prayer made in the instant petition. It is also noted that proceedings under Section 9 of the Act have already been carried out awaiting the appointment of an Arbitrator under Section 11 of the Act.

9. It is also noted that the instant petition has been filed for the appointment of an Arbitrator in accordance with Clause 8.7 of the Facility-Cum-Hypothecation Agreement and Clause 10 of the Deed of Guarantee, executed between the parties. The aforesaid clauses state that if any dispute arises between the parties then the said dispute will be settled or adjudicated through Arbitration and the seat of Arbitration Proceeding shall be New Delhi. Extracts of the relevant clauses are as below: -

ARBITRATION CLAUSE of "Facility-Cum-Hypothecation Agreement"

8.7 ARBITRATION

8.7.1 In case of any dispute arising out of or in relation to the Transaction Documents, the party shall settle the dispute through



arbitration under the Indian Arbitration and Conciliation Act, 1996 (amendments thereto. The Arbitration shall be referred to a sole arbitrator appointed by the Lender. The Venue of arbitration proceedings shall be New Delhi, India. All Proceedings shall be in English.

8.7.2 The award of the arbitrator shall be final and binding on the Parties and the expenses of the arbitration shall be borne in such manner as the arbitrator may decide.

ARBITRATION CLAUSE of "Deed of Guarantee"

10. ARBITRATION, GOVERNING LAW AND JURISDICTION

10.1 Governing Law and Jurisdiction: *Subject to Clause 10.2 (Arbitration), any dispute under this Guarantee shall be governed by and construed in accordance with the laws of India and be subject to the jurisdiction of the Courts at New Delhi.*

10.2 All Claims, disputes or differences whatsoever which may at any time hereafter arise between Lender and Guarantor(s) hereto concerning this Guarantee or its constructions or effect or as to the rights, duties, obligation or to any matter in any way connected with or arising out of or in relation to the subject matter of this Guarantee shall be referred to arbitration of a sole arbitrator appointed by the Lender. The arbitration proceedings shall be conducted in English in accordance with and subject to the provisions of Arbitration and Conciliation Act. 1996 or any statutory modification or reenactment thereof for the time being in force. The place of Arbitration shall be at New Delhi. The Parties agree that any award passed shall be final and binding."

10. It is thus seen that the dispute is amenable to be adjudicated by the arbitrator. It is explicitly evident that where there exists an arbitration clause in the event any dispute arises between the parties, there is no impediment in appointing an independent Sole Arbitrator. Reference can be made to the decisions of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ ***TRF Limited v. Energo Engineering Projects Ltd.***,² ***Bharat Broadband Network Limited v. United Telecoms Limited.***,³ and

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*⁴.**

11. The Court, therefore, while reserving all rights and contentions of the parties, deems it appropriate to appoint an Arbitrator to adjudicate the dispute which has arisen between the parties.

12. Accordingly, Ms. Aditi Gupta, Advocate (Mobile No. 9811046710, email ID: aditigupta29@gmail.com) is appointed as the sole Arbitrator.

13. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

14. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering on reference.

15. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

17. The petition stands disposed of in the aforesaid terms.

APRIL 03, 2025/P/MJO

PURUSHAINdra KUMAR KAURAV, J

Click here to check corrigendum, if any

⁴ 2023 SCC OnLine SC 1666