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

+ **ARB.P. 2087/2024**

AXIS FINANCE LIMITED

.....Petitioner

Through: Mr. Vivek Sinha, Mr. Vivek Malik,
Mr. Shubham Bharara, Ms. Akshita
Khasia, Advs.

versus

BROWN AND BLACK BIO PVT LTD & ORS.Respondents

Through: Mr. Mohd. Zahid, Ms. Kanchan Bala,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

18.03.2025

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The petitioner had advanced a loan of Rs. 30 lakhs *vide* Business Loan Agreement dated 31.01.2022.
3. The Loan Agreement was executed at Delhi and the arbitration clause is Clause 35 of the Loan Agreement which reads as under:

“35. ARBITRATION

1. 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. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 10.10.2024. Thereafter, the present petition has been filed.



5. In the reply filed by the respondent, the respondent has questioned the territorial jurisdiction of this Court on the ground that the agreement contemplated the jurisdiction of Jaipur. The Loan Agreement was executed at Jaipur and hence the Jaipur Court would have jurisdiction.

6. A perusal of the agreement relied upon by the respondent shows that the agreement is with respect to the loan No. BLA 00001919 which is for a sum of Rs. 5 lakhs.

7. The loan agreement on the basis of which the present petition has been filed is based upon loan agreement No. 0456 BLA 00002184 which is for a sum of Rs. 30 lakhs.

8. The agreement relied upon by the respondent is a different loan agreement.

9. In the present case, Clause 35 of the Loan Agreement grants the petitioner the option to initiate arbitration either at Delhi or at Mumbai.

10. Pursuant to the discretion granted to the petitioner, the petitioner has exercised its option to initiate the proceedings at Delhi. Hence, this Court has the territorial jurisdiction to entertain and try the present petition.

11. For the said reasons, I am satisfied that there are disputes between the parties which need to be resolved by arbitration.

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

- i) Ms. Bhawna Khanna (Adv.) (Mob. No. 9810071710) 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 (hereinafter, referred to as the 'DIAC').



- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
13. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 18, 2025/DM

Click here to check corrigendum, if any