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

+ **ARB.P. 456/2026**

**AXIS FINANCE LIMITED**

.....Petitioner

Through: Mr. Abu John Mathew, Adv.  
(M:9871536016)

versus

**SUNILKUMAR N DUBE**

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER**

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**22.04.2026**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking appointment of sole Arbitrator to adjudicate the disputes between the parties arising out of the Loan Agreement dated 27<sup>th</sup> October, 2022, owing to default in repayment of loan by the respondent.
2. Notice had been issued to the respondent on the last date of hearing.
3. As per the Office Noting, the respondent stands served through E-mail by the Registry of this Court.
4. Learned counsel for the petitioner has also filed an affidavit of service, in order to show that service upon the respondent, has been effected through WhatsApp, as well as E-mail. He confirms the fact that service through said modes has been done on the valid E-mail and Mobile Number, which had been submitted by the respondent himself in the loan application.
5. Accordingly, service to the respondent is complete. However, none appears for the respondent when the matter is called out.



6. Thus, this Court proceeds to deal with the present petition.
7. As per the petitioner, the respondent had availed a loan facility of Rs. 15,05,240/- (Rupees Fifteen lacs Five Thousand Two Hundred and Forty) under the aforesaid Loan Agreement. As per the terms of Agreement, the respondent was under an obligation to repay the loan amount along with interest in 60 equated monthly installments. However, the respondent made irregular payments, which resulted in default of his repayment obligations under the Loan Agreement.
8. In view thereof, the petitioner recalled the loan issued to the respondent and invoked the arbitration clause of the Loan Agreement, i.e., Clause 14, by way of a letter dated 07<sup>th</sup> February, 2024, sent under Section 21 of the Arbitration Act.
9. Attention of this Court has been drawn to Clause 14 of the said Loan Agreement, which contains the arbitration clause in the following manner:

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**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.

xxx xxx xxx

(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.

xxx xxx xxx”



10. Perusal of the aforesaid shows that there is a valid arbitration clause between the parties, as per which, the venue as well as the juridical seat of arbitration shall be either Delhi or Mumbai. Thus, the present petition has been filed before this Court.

11. At this stage, this Court notes the letter dated 07<sup>th</sup> February, 2024 of the petitioner under Section 21 of the Arbitration Act, along with which, the petitioner has also placed on record the speed post receipts, in order to show that the said letter had been dispatched. Though proof of service of the said letter has not been placed on record, learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of **Adavya Projects Private Limited Versus Vishal Structurals Private Limited and Others, (2025) 9 SCC 686**, particularly upon Paras 46 and 47, which read as follows:

“xxx xxx xxx

*46. While we agree with the decision in Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd., 2017 SCC OnLine Del 7228] insofar as holding that the notice under Section 21 is mandatory, unless the contract provides otherwise, we do not agree with the conclusion that non-service of such notice on a party nullifies the Arbitral Tribunal's jurisdiction over him. The purpose of the Section 21 notice is clear — by fixing the date of commencement of arbitration, it enables the calculation of limitation and it is a necessary precondition for filing an application under Section 11 ACA. The other purposes served by such notice — of informing the respondent about the claims, giving the respondent an opportunity to admit and contest claims and raise counterclaims, and to object to proposed arbitrators — are only incidental and secondary. We have already held that the contents of the notice do not restrict the claims, and any objections regarding limitation and maintainability can be raised before the Arbitral Tribunal, and the ACA provides mechanisms for challenging the appointment of arbitrators on various grounds. Hence, while a Section 21 notice may perform these functions, it is not the primary or only mechanism envisaged by the ACA.*

*47. In this light, and considering that in the facts of the present case a Section 21 notice was in fact issued to Respondent 1, we find it*



*difficult to accept that the decision in Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd., 2017 SCC OnLine Del 7228] can be relied on to entirely reject the Arbitral Tribunal's jurisdiction over Respondents 2 and 3.*

*xxx xxx xxx”*

12. By relying upon the aforesaid, learned counsel for the petitioner submits that the Supreme Court has categorically held that merely because the proof of service of the notice under Section 21 of Arbitration Act has not been placed on record, the jurisdiction of the Arbitral Tribunal over the respondent does not nullify, or become *malafide*.

13. Accordingly, this Court proceeds to pass appropriate orders in the present matter.

14. In view of the discussion hereinabove, and the Loan Agreement between the parties, it is clear that there is a valid arbitration clause between the parties, and there are disputes between the parties which need to be adjudicated through the process of arbitration.

15. This Court takes note of the submission made by learned counsel for the petitioner that the petitioner has an approximate claim of Rs.16,86,978/- (Rupees Sixteen Lacs Eighty Six Thousand Nine Hundred and Seventy Eight).

16. Accordingly, this Court finds no impediment in appointing a sole Arbitrator for adjudication of the disputes between the parties, and issues the following directions:

- i) Ms. Latika Malhotra, Advocate, (Mob: +91-9811895162) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.



- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event of any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
  - iv) It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.
  - 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 (02) weeks from today.
17. Accordingly, the present petition is disposed of in the aforesaid terms.
18. A copy of the order passed today, be sent to the learned Arbitrator, for information and compliance.

**MINI PUSHKARNA, J**

**APRIL 22, 2026/au**