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

\# **CNR No. DLHC010148942026**

\+ ARB.P. 644/2026 & I.A. 10010/2026

KOTAK MAHINDRA BANK LTD .....Petitioner

Through: Mr. Animesh Khandelwal, Advocate.

versus

TIWAM STAINLESS TUBES PRIVATE LTD & ORS. .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 17.11.2026

1. By way of the present petition, filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter, "the Act"], the petitioner seeks appointment of an arbitrator for adjudication of the disputes that have arisen between the parties under a Facility Agreement dated 31.10.2019 [hereinafter, "the Agreement"].

2. The Agreement was executed between Hero FinCorp Limited, as the lender, respondent No. 1, as the borrower, and respondent Nos. 2 to 5, as the guarantors. Respondent Nos. 2 to 5 also executed Deeds of Guarantee. Thereafter, *vide* Assignment Agreement dated 27.06.2024, Hero FinCorp Limited assigned the loan dues payable by the respondents in favour of the petitioner.

3. Clause 20 of the Agreement contains the arbitration clause,

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providing for adjudication of disputes between the parties through arbitration, with New Delhi designated as the venue, seat and place of arbitration. Further, Clause 19.3 of the Agreement confers exclusive jurisdiction upon the Courts at New Delhi.

4. The petitioner contends that the loan was not repaid in accordance with the terms of the Agreement. Consequently, the petitioner invoked arbitration *vide* notice dated 23.02.2026, calling upon the respondents to pay an amount of Rs. 1,10,69,711.99/- as outstanding dues as on 23.02.2026, alongwith further interest. The petitioner also proposed the name of an arbitrator for adjudication of the disputes.

5. As the notice of invocation did not elicit any response from the respondents, the petitioner has approached this Court by way of the present petition.

6. Notice was issued on 13.04.2026, and the matter remains pending for service upon the respondents. By order dated 09.10.2026, it was directed as follows:

> *"1. Notice was issued in the present petition on 13.04.2026. Although the order dated 13.05.2026 records the appearance of counsel on behalf of the respondents, fresh notice was directed to be issued vide order dated 10.08.2026, in view of the Office report indicating that service had not been effected. The latest Office report records that the respondents have been served by e-mail; however, the reports regarding service by Ordinary and Speed Post are awaited.*
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> *2. Respondent No. 1 is a company. Mr. Animesh Khandelwal, learned counsel for the petitioner, submits that the remaining respondents, i.e. respondent Nos. 2 to 5 are directors of respondent No. 1 and have also guaranteed the loan in question.*
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> *3. Mr. Khandelwal further submits that the respondents were represented in the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], before the District Court, Patiala House Courts. He also states that copies of the present petition under Section 11 of the Act have been served upon the respondents.*

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> *4. In the interest of justice, Mr. Khandelwal is directed to serve a copy of the petition, alongwith a copy of this order, upon the respondents by Speed Post, at the addresses set out in Schedule I to the Facility Agreement dated 31.10.2019, with reference to Clause 21.6 thereof, as well as at the registered office of respondent No. 1. Service shall also be effected by e-mail at the addresses mentioned in the said Agreement, and those reflected in the records of the Ministry of Corporate Affairs. Dasti service, in addition, is also permitted. An affidavit of compliance shall be filed within two weeks from today.*
>
> *5. In the event the respondents do not enter appearance despite compliance, the petition may be taken up for hearing in their absence.*
>
> *6. In the event the respondents seek to oppose the appointment of an arbitrator, they may file their replies to the petition within two weeks of service, positively.*"

7. Pursuant to the aforesaid directions, Mr. Animesh Khandelwal, learned counsel for the petitioner, has filed an affidavit of service dated 13.11.2026, a copy of which has been handed up in Court and is taken on record. The affidavit records that the respondents have been duly served through WhatsApp and e-mail. It is further stated that the respondents refused to accept *dasti* service.

8. Insofar as service through Speed Post is concerned, the affidavit records that the attempt to serve respondent No. 1 at its registered office was unsuccessful, whereas service upon the remaining respondents was duly effected. Nevertheless, having regard to the fact that service upon respondent No. 1 was attempted at its registered office, service upon the company is also treated as complete in terms of Sections 12 and 20 of the Companies Act, 2013. In view of the aforesaid, I am satisfied that sufficient steps have been taken to effect service upon all the respondents. It is, therefore, not considered necessary to await their appearance any further, and the petition is taken up for consideration in their absence.

9. At the stage of proceedings under Section 11 of the Act, the Court

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is required to undertake only a *prima facie* examination of the existence of an arbitration agreement and its valid invocation. In the present case, the existence of the arbitration clause contained in Clause 20 of the Agreement, as well as its invocation by the petitioner vide notice dated 23.02.2026, *prima facie* satisfy the requirements for reference of the disputes to arbitration.

10. In view of the foregoing, the petition is disposed of with the following directions:

a) The disputes arising between the parties out of the Agreement are referred to arbitration.

b) Mr. Ankit Yadav, Advocate [Tel: 8574590040] is appointed as the learned Arbitrator to adjudicate the disputes between the parties arising under the Agreement.

c) The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre ["DIAC"] and shall be governed by the Rules of DIAC, including with respect to the remuneration of the learned Arbitrator.

d) The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act before entering upon the reference.

e) Since the respondents have not entered appearance in the present proceedings, it is clarified that they shall be duly served in accordance with the applicable DIAC Rules in the arbitral proceedings as well.

11. It is clarified that this Court has not expressed any opinion on the merits of the disputes between the parties. All rights and contentions of the parties, including those relating to the arbitrability and maintainability

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of the claims, as well as the merits of the disputes, are left open for consideration and adjudication by the learned Arbitrator.

12. The petition, alongwith any pending applications, stands disposed of in the above terms.

PRATEEK JALAN, J

NOVEMBER 17, 2026
SS/SD/

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