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

+ **ARB.P. 2055/2025**

HERO FINCORP LIMITED

.....Petitioner

Through: Mr. Rahul Gupta, Adv.

versus

BABA VISHWANATH TRADERS & ORS.Respondents

Through: Mr. Loveleen Yadav & Mr. Vatsal
Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

21.04.2026

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1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.
2. The brief facts are that the petitioner company sanctioned a Bill Discounting Facility to the respondents on 30.03.2021 with an initial limit of ₹1.5 crore, pursuant to a Facility Agreement. Respondent no. 2 and 3 executed deeds of guarantee, making them jointly and severally liable with the principal borrower. The facility was subsequently renewed, and in July 2024 the limit was enhanced to ₹3 crore through a Supplemental Sanction Letter dated 17.10.2024, along with a fresh Facility Agreement. The respondents defaulted in repayment despite repeated demands, leading the petitioner to classify the account as a Non-Performing Asset (NPA) in accordance with RBI norms. Consequently, the petitioner terminated the facility on 22.07.2025 and issued a loan recall notice demanding ₹2,50,66,436.64 as the outstanding amount as of 21.07.2025. Thereafter, on



04.09.2025, the petitioner invoked clause 20 of the Loan Agreement and issued a notice under Section 21 of the Act calling upon the respondents to agree to the appointment of an arbitrator within 30 days for resolution of disputes.

3. Learned counsel for the respondents raises an objection that respondent no.3 is not a necessary party. He further submits that no other objection exists for referring the matter to arbitration.

4. The Supreme Court in **Ajay Madhusudan Patel & Ors. v. Jyotrindra S. Patel & Ors.**, (2025) 2 SCC 147 while summarising the legal position on the issue of the “scope of jurisdiction of the referral court under Section 11(6) of the 1996 Act” and considering the decision in **Cox & Kings Ltd. v. SAP India (p) Ltd. & Anr.**, (2024) 4 SCC 1 held that the issue of determining the parties to the arbitration agreement can be decided by the arbitrator under Section 16 of the Act. The relevant portion is quoted below:

“76.7. *Cox & Kings*² specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16.”

(emphasis supplied)

5. Accordingly, the petition is allowed by appointing Mr. Harish Dudani,



District Judge (Retd.) (Mobile No.9910384728) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

6. The fees of the learned Arbitrator will be governed by Schedule IV of the Act. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

7. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

8. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

APRIL 21, 2026
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