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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 762/2023
ADITYA BIRLA FINANCE LIMITED Petitioner
Through: Mr. Vidur Sikka, Adv.

Versus

RAKSHANA SPINTEX & ORS. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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O R D E R
31.01.2024

1. This is a petition seeking appointment of the Sole Arbitrator as per the Clause 11.8 of the Loan/Facility Agreement dated 16.09.2022. The said clause reads as under:-

“ 11.8 DISPUTE RESOLUTION

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by the Lender. All parties to this Agreement hereby expressly consent to the Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by the Lender acting as the sole appointing authority. The place of arbitration of arbitration shall be Delhi, Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996. Notwithstanding anything contained



hereinabove, in the event the legal status of the Lander changes or in the event of the law being made or amended so as to bring the Lender under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to Lender proceed to recover dues from the Saller under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Lender, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Lender such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Lender exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Lender nor a change in law as referred to in this sub paragraph above, will result invading an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement."

2. As the respondents failed to repay the loan amount despite the recall notice dated 01.04.2023, the petitioner invoked the arbitration clause and thereafter filed the present petition.
3. The notice has been issued in the petition vide order dated 03.08.2023. On the last date of hearing, the petitioner was required to take fresh steps to serve the notice.
4. The petitioner has served the respondent through speed post service



and through whatsapp.

5. Mr. Sikka, learned counsel for the petitioner has drawn my attention to a whatsapp message sent on mobile No. 8098889000, wherein in response to the notice the respondent has stated "*Sir, I told to our advocate*".

6. For the said reasons, I am inclined to proceed ex parte as the respondents have been served and despite service there is no appearance even today.

7. For the reasons noted above, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- vi) Mr. Harshit Aggarwal, (Advocate) (Mob. No. 9811026362) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- vii) 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'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- viii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- ix) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.



x) The parties shall approach the learned Arbitrator within two weeks from today.

8. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 31, 2024/NG

Click here to check corrigendum, if any