

Axis Finance Limited vs Yogendra Kumar Rajput on 7 March, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 934/2022

AXIS FINANCE LIMITED

..... Pet
Through: Mr. John Mathew, Adv.

versus

YOGENDRA KUMAR RAJPUT

..... Res
Through: Mr. Gaurav Gogia, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 07.03.2023

1. The instant petition has been preferred under Section 11 of the Arbitration and Conciliation Act, 1996 [the Act] for constitution of an Arbitral Tribunal consequent to the disputes having arisen between the parties.
2. The disputes themselves emanate from a Lending Agreement dated 26 November 2021. Upon defaults allegedly having been committed by the Respondent, the Petitioner issued a loan recall notice dated 26 May 2022. Since the matter could not be resolved, arbitration was invoked in terms of the notice of 30 June 2022.
3. It becomes pertinent to note that Clause 14 of the Loan Agreement and which comprises the Arbitration Agreement reads as follows:-

"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, 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.

(ii) Notwithstanding anything to the contrary contained herein, any dispute, controversy or claim arising out of or relating to this contract, including its construction, meaning, scope or validity thereof, shall be resolved and settled by arbitration under the Arbitration and Conciliation Act, 1996 (as amended) which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules ("Rules").

(iii) The parties consent to carry out the aforesaid proceedings electronically via the email addresses and / or mobile numbers as per Axis Finance records, updated from time to time.

(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."

4. Since the clause itself contemplated the resolution process being undertaken through the Online Dispute Resolution [ODR] mode, the Petitioner appears to have engaged the services of Presolve 360, an institution which implements arbitration through the ODR mode.

5. A dispute is raised by and on behalf of the Respondent with respect to the procedure as followed by the Petitioner with it being contended that such a unilateral appointment would not sustain. Taking note of the aforesaid, the proceedings before Presolve 360 were withdrawn.

6. It becomes pertinent to note that the existence of the Arbitration Agreement is not questioned by the Respondent. The solitary objection which is taken is to the appointment of Presolve 360. It is also not the case of the Respondent that the ODR process as was contemplated in the Agreement would be contrary to the provisions of the Act.

7. On an overall consideration of the aforesaid, the instant petition is allowed. The Court hereby appoints Mr. Saurabh Karan Singh, Advocate [Official Address: D-80, Panchsheel Enclave, New Delhi - 110017] [Mobile No. +91-8527022200] [email:

saurabhdevkaran@gmail.com] as the sole arbitrator for resolution of the disputes which have arisen. The proceedings be undertaken through the ODR mode.

8. The parties are directed to appear before the learned arbitrator, as and when notified. This is subject to the learned arbitrator making the necessary disclosure under Section 12(1) of the Act and

not being ineligible under Section 12(5) of the Act.

9. The fees of the arbitrator shall be decided according to the Fourth Schedule of the Act.

YASHWANT VARMA, J.

MARCH 07, 2023 neha