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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010329742026**+ **ARB.P. 1229/2026****ENCORE ASSET RECONSTRUCTION COMPANY PVT LTD**

.....Petitioner

Through: **Mr. Aman Vasisth and Mr.  
Hardik Mathur, Advs.**

versus

**MR ANIL KATHURIA AND ORS** .....RespondentsThrough: **Ms. Abiha Zaidi, Mr. Pritam  
Raman Giriya, Mr. Ashish  
Bainsla and Mr. Aryan  
Sarawgi, Advs.****CORAM:****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT(ORAL)**% **05.08.2026**1. This Court *vide* order dated 27.07.2026 recorded the following:**“ARB.P. 1229/2026**

3. *The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking adjudication of disputes arisen out of the Loan Facility Agreement dated 30.03.2023.*
4. *The Petitioner's case is that the Aditya Birla Capital Limited sanctioned a loan facility of Rs.5 crores to the Respondent No. 1 with Respondent No. 2 and 3 as co-borrowers under the Facility Agreement dated 30.03.2023, the same was secured by the equitable mortgage over the residential property bearing no. 1138 Block J, Ansal's Palam Vihar, Gurugram.*
5. *According to the Petitioner, the Respondents defaulted in re-payments and demolished the mortgage structure without the*



*lender's consent.*

6. *Additionally, the Respondents failed to clear the outstanding dues despite the foreclosure arrangement and extension granted in proceedings before the Debt Recovery Tribunal. It is also made out from the petition that the loan account was classified as non-performing asset and was subsequently assigned to the Petitioner under the assignment agreement dated 30.06.2025.*
7. *In view thereof, the Petitioner invoked arbitration as provided under Clause 22 of the subject agreement. The relevant portion is extracted hereinbelow:*

***“22 GOVERNING LAW, JURISDICTION &  
DISPUTE RESOLUTION***

*Laws of India shall govern this Agreement, the security and other documentation pursuant hereto and Courts in the City of Delhi having exclusive jurisdiction over all aspects governing the interpretation and enforcement of this Agreement, the security and other documentation pursuant hereto. 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 Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority.*

*The place of arbitration shall be Delhi or such other place as per Lender's discretion. Parties agree that the courts in Delhi or such other courts as decided by Lender 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 Facility Provider changes or in the event of the law being made or amended so as to bring*



*the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider 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 Facility Provider 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 Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement"*

8. *It is also made out from the record that the Petitioner served notice dated 24.01.2026 to the Respondents in accordance of Section 21 of the Act.*
9. *Upon the Petitioner taking appropriate steps, let notice be issued to the Respondents through all permissible modes including electronic means and dasti and additionally through the learned Counsel for appeared on behalf of the Respondents before the Debt Recovery Tribunal.*
10. *Reply, if any, be filed within three weeks. Rejoinder thereto, if any, be filed within one week thereafter.*
11. *List on 31.08.2026."*

2. It is well settled that, while exercising jurisdiction under Section 11 of the Act, the scope of enquiry is confined to examining the *prima*



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*facie* existence of an arbitration agreement<sup>1</sup>.

3. In the present case, there is no dispute with regard to the existence of a valid arbitration clause between the parties.

4. Further, the parties are *ad idem* with respect to the reference of the disputes to arbitration. In the aforesaid circumstances, this Court finds no impediment in appointing a Sole Arbitrator.

5. Accordingly, Mr. Harish Pandey, Advocate (Mob. No. +91-9891297497) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within two weeks from today.

6. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within two weeks of entering reference.

7. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

8. It shall be open to the parties to raise all pleas, including objection as to arbitrability and jurisdiction, before the learned Sole

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<sup>1</sup> SBI General Insurance Co. Ltd. v. Krish Spinning 2024 SCC OnLine SC 1754



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Arbitrator who shall decide the same in accordance with law.

9. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

10. The Registry is directed to send a receipt of this order to Mr. Harish Pandey, learned Arbitrator through all permissible modes including email.

11. Accordingly, the present petition is disposed of in the above terms and next date of hearing i.e. 31.08.2026 stands cancelled.

**OM PRAKASH SHUKLA, J**

**AUGUST 5, 2026/ss**