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

*Date of Decision: 3<sup>rd</sup> September, 2025*

1.

+ **ARB.P. 301/2025**

AXIS FINANCE LIMITED .....Petitioner  
Through: Mr. Vatsal Sharma, Advocate.

versus

PANKAJ HIRALAL KHINWASARA .....Respondent  
Through: Mr. B.S. Bagga, Mr. Pratik Gaurava  
and Mr. Shikhar Baxi, Advocates.

2.

+ **ARB.P. 311/2025**

AXIS FINANCE LIMITED .....Petitioner  
Through: Mr. Vatsal Sharma, Advocate

versus

SOMNATH RAMCHANDRA THOPTE .....Respondent  
Through: Mr. B S Bagga, Mr. Pratik Gaurav &  
Mr. Shikhar Baxi, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

1. These petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act') to appoint a Sole Arbitrator, to adjudicate the disputes arising out of Loan Agreements executed between the parties. The arbitration clause is contained in Clause 14 of the said agreements.



2. Both the petitions are identical and are being disposed of by a common judgment. For the sake of brevity, facts of ARB.P. 301/2025 are reproduced below.

3. As per the petitioner, the respondent applied for and was sanctioned a loan of Rs. 8,08,693/- by the petitioner pursuant to execution of Loan Agreement dated 31<sup>st</sup> May, 2021 (hereinafter 'Agreement'). However, it is stated that the respondent has defaulted in repayment of the loan amount. The said Agreement contains an arbitration clause, *i.e.* Clause 14, which is set out below:-

*“14. 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, of a sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed 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.”*

4. The notice of invocation of arbitration was sent by the petitioner on 21<sup>st</sup> June, 2024, which, as per the tracking report, has been delivered. However, there has been no response from the respondent.

5. Pursuant to the notice issued by this Court, reply has been filed on behalf of the respondent.



6. Essentially, the case of the respondent is that the respondent has not signed the Agreement, which contains the arbitration clause. He further submits that the amount of loan was disbursed in the account of the respondent and on the very next date, it was fraudulently removed therefrom.

7. It is submitted that the aforesaid fraudulent transaction is the subject matter of investigation by the Pune Police in FIR No.0084 dated 17<sup>th</sup> March, 2023.

8. Counsel for the respondent submits that, like the respondent, 76 other investors have been defrauded in this manner and the amounts credited in their accounts have been transferred to the account of one M/s Ashtavinayak Investments in collusion with the officials of the Bank. He places reliance on the judgment of the Supreme Court in ***A. Ayyasamy v. A. Paramasivam & Ors. (2016) 10 SCC 386*** to submit that in cases of serious fraud, the parties should not be referred for arbitration and the matter should be adjudicated in a civil suit.

9. Counsel for the respondent submits that the aforesaid allegations are issues that require detailed examination and adjudication, which can only be undertaken in arbitration. He further relies on the judgment of the Hon'ble Supreme Court in ***Gojii Technologies Private Limited v. Sokrati Technologies Private Limited (2025) 2 SCC 192***, more particularly paragraphs 20 and 21, which read as under:-

*“20. As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532], frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.*



21. *Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.”*

10. Per contra, the counsel appearing on behalf of the petitioner submits that in the present case, the loan was disbursed on 31<sup>st</sup> May, 2021, to the account of the respondent pursuant to the execution of the Agreement, which bears the signatures of the respondent.

11. It is further submitted that the respondent continued to pay EMI payments towards the repayment of the loan till 14<sup>th</sup> July, 2023, and only thereafter, the loan was declared to be a Non-Performing Asset (NPA).

12. The petitioner has placed on record the loan account statement along with his rejoinder, which reflects that the loan amount was paid to the respondent on 31<sup>st</sup> May, 2021. The statement also reflects that continuous payments towards EMI were made to the petitioner till 5<sup>th</sup> February, 2023.

13. Counsel appearing on behalf of the petitioner submits that EMI payments were not paid by the respondent but by M/s Ashtavinayak Investments.

14. I have heard the counsel for the parties.

15. Various objections raised by the respondent can be raised before the Arbitral Tribunal. In a batch of similar petitions filed by the petitioner against third persons, the Coordinate Bench *vide* order dated 29<sup>th</sup> August 2025 in ARB.P.731/2024, rejected a similar challenge and referred the parties to arbitration by appointing a Sole Arbitrator.

16. Counsel for the respondent submits that the same Sole Arbitrator be



appointed in the present petitions as was appointed by the aforesaid order passed by the Coordinate Bench in ARB.P.731/2024

17. In my considered view, the respondent has failed to make out a case of egregious fraud which would prevent the Court from appointing an Arbitrator to adjudicate the disputes between the parties in terms of the arbitration clause.

18. In fact in *Goqii Technologies* (supra) cited by the respondent, the Supreme Court specifically held that frivolity in litigation is also an aspect which the referring court should not decide at the stage of Section 11 and has to be left for the Arbitrator to decide.

19. For the said reasons, the petitions are allowed and disposed of with the following directions:

- i. Mr. Tanoodbhav Singhdev, Advocate (Mob. No. +91-9999012345) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018 and each petition will be considered a separate reference.
- iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v. The parties shall approach the learned Arbitrator within two (2)



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weeks from today.

20. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, defence including fraud or any other preliminary objection, as well as claims/counter-claims and merits of the dispute, allegations of fraud of either of the parties, are left open for adjudication by the learned Arbitrator.

21. Nothing said in the order will be construed as adjudication on the merits by the Arbitrator, and he shall decide the matter without being influenced by any observations made.

**AMIT BANSAL, J**

**SEPTEMBER 3, 2025**

*Vivek/-*