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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 05.12.2025

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ARB.P. 668/2024

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD

.....Petitioner

Through: Ms Harshita Sukhija, Mr Joginder
Sukhija and Ms Karuna Chhatwal,
Advocates

versus

BHORUKA CLASSIC FINANCE PRIVATE LIMITED AND ANR

.....Respondents

Through: Mr. Karunesh Tandon , Mr. Sarthak
Mittal , Mr. Prabin Mohan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator for adjudication of disputes, arising out of two Agreements, namely Term Loan Agreement and a Deed of Guarantee.
2. In the present case, respondent No. 1 and 2 approached the petitioner for grant of term loan of 2 crores for on-lending to its commercial vehicle clients. The petitioner sanctioned a Loan and a Loan Agreement dated 24.01.2018 was executed.
3. The Loan Agreement contains an arbitration clause being Clause 7.9 which reads as under:

“All disputes, differences and/or claim arising out of these present



or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new 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 in Delhi.”

4. The Loan Agreement is signed by the authorized signatory as well as respondent No. 2. Additionally, an undated Deed of Guarantee was also executed by respondent No. 2 as the Director of respondent No. 1.

5. The said Deed of Personal Guarantee also contains arbitration clause being Clause 13 which reads as under:

“(13) The Guarantor hereby agrees that, all disputes, differences and/or claim arising out of this guarantee or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to



act as an arbitrator, the Lender may appoint a new 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 proceeding shall be held in Mumbai.”

6. Since the respondent defaulted in its repayment schedule, the petitioner issued a loan recall notice dated 26.11.2019 and in terms of Clause 7.9 appointed an Arbitrator. *Vide* Order dated 21.02.2020, the Sole Arbitrator withdrew from the office of a Arbitrator and gave liberty to the petitioner to initiate de novo arbitration on same cause of action and/or fresh cause of action.
7. Thereafter a second Arbitrator was appointed who withdrew her appointment on 12.01.2021. The petitioner appointed another Arbitrator on 23.09.2021 and the 3rd arbitrator recused herself as the arbitration could not be completed within 1 year.
8. Subsequently, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 11.01.2024 and thereafter filed the present petition.
9. Mr. Tandon, learned counsel for the respondents, has handed over a reply which is taken on record. He opposes the petition primarily on the ground that the Deed of Guarantee and the Loan Agreement are separate and independent contracts, and disputes under them cannot be consolidated. He submits that the parties deliberately provided different venues for arbitration Delhi for one Agreement and Mumbai for the other clearly indicating their intention to maintain separate arbitral processes.
10. He further argues that the petition is not maintainable since an



Arbitrator has already been appointed, and any grievance should have been raised under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 by seeking the Arbitrator's substitution. He also contends that the petitioner's claims are barred by limitation, as the loan recall notice was issued on 26.11.2019.

11. I am unable to agree with any of the contentions of the respondents.

12. The argument regarding 2 Agreements being separate and independent does not inspire my confidence. In the present case, the loan was obtained by respondent No. 1 and the loan agreement has been signed by respondent No. 2 as Director.

13. The Deed of Personal Guarantee reads as under:

"This deed of personal guarantee is executed by the guarantor named in point No. 3 below:

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|----|--|---|
| 1. | <i>Date of Execution</i> | |
| 2. | <i>Place of Execution</i> | |
| 3. | <i>Name of the Guarantor</i> | <i>Vikas Agarwal</i> |
| 4. | <i>Postal Address of the Guarantor</i> | <i>17/B, Manek Building, L.D. Ruparel Marg Malabar Hill Mumbai Maharashtra 400006</i> |
| 5. | <i>Name of the Borrower/s</i> | <i>Bhoruka Classic Finance Pvt. Ltd.</i> |
| 6. | <i>Postal Address of the Borrower/s (Registered office &/or Place of Business)</i> | <i>Registered Office: Nirmal Building 16th Floor Nariman Point</i> |



| | | |
|----|---|--|
| | | <i>Mumbai Maharashtra 400021 & Head Office: 1207 Regent Chambers, Nariman Point, Mumbai - 400021</i> |
| 7. | <i>Legal Entity of the Co - Borrower(s) (e.g. Individual/Proprietorship Firm/Partnership Firm/Hindu Undivided Family/Company registered under the Companies Act, 1956/2013)</i> | <i>Company registered under the companies Act, 1956/2013</i> |
| 8. | <i>Name of the Co-Borrower(s) (if any)</i> | <i>NA</i> |
| 9. | <i>Postal Address of the Co- Borrower(s) (Registered office & Place of Business)</i> | <i>NA</i> |
| 10 | <i>Legal Entity of the Co- Borrower(s) (e.g. Individual/Proprietorship Firm/Partnership</i> | <i>NA</i> |



| | | |
|------------|---|--|
| | <i>Firm/Hindu Undivided Family/Company registered under the Companies Act, 1956/2013)</i> | |
| <i>11</i> | <i>Loan Amount in Figures and Words (Rs.)</i> | <i>Rs.2,00,00,000.00 Rupees Two Crore only.</i> |
| <i>12.</i> | <i>Sanction Letter date and Ref No.</i> | <i>MMFSL/17- 18/Bhoruka-01 Dated 17th Jan 2017</i> |

IN FAVOUR OF

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LIMITED, a non-banking financial company having its registered office at Apollo Bunder, Gateway Building, Mumbai 400001 and also Corporate office at Sadhana House, 2nd Floor, Sadhana House, Behind Mahindra Towers, 570, P.B. Marg, Worli, Mumbai-400018, India (CIN: L65921MH1991PLC059642) (PAN: AAACM2931R) (hereinafter called the “lender” and the term, unless repugnant to the context, include all its successors and permitted assigns, etc.)

Whereas the guarantor is a Proprietor/Partner/Karta/Managing Director/Director of the Borrower.

And whereas Borrower whose names, address and legal constitution has been mentioned in point No. 5, 6 and 7.... Mentioned in point no. 8, 9 and 10 above (“the borrower” and “Co



– Borrower(s) ”.

And Whereas Borrower has approached the guarantor with a request for providing a guarantee to the Lender for the compliance of the obligations of the Borrower arising out of the Said Sanction Letter.

And whereas the Guarantor at the instance of the Borrower has agreed and consented to provide guarantee to the Lender for the compliance of the obligations of the Borrower arising out of the Said Sanction Letter and loan agreement dated _____ (hereinafter referred to as “the Said Agreement”) executed between the Borrower and the Lender including the repayment of the loan as per the schedule contained in the Said Agreement

And whereas the Lender after considering the request of the Guarantor, have agreed to provide the loan subject to the terms and conditions as per the said Sanction Letter and have thought it fit to take the personal guarantee of the Guarantor, to safeguard the interest of the Lender.

NOW THIS DEED WITNESSETH AS FOLLOWS:

In consideration of the premises above the Guarantor hereby unconditionally, absolutely and irrevocably guarantees to and agrees with the Lender as follows

(1) in reliance on my guarantee, the Lender herein has sanctioned to the Borrower loan facility under Said Sanction Letter with all its renewals, continuation, further extension or renovation of



whatsoever nature for an amount as mentioned in point no. 11 above together with interest, Default Interest, penal interest, charges, fees, legal charges, levies etc. and amendments therein from time to time.

(2) The Lender shall have sole discretion to make disbursement(s) and/or interim disbursement(s) to the Borrower from out of the said Loan amount sanctioned at such time, on such conditions and in such manner as the Lender may decide

(3) The Guarantor hereby personally guarantees to the Lender the payment of any obligation of the Borrower arising out of the facility granted under the Said Sanction Letter and the Guarantor hereby agree to bind himself to pay the Lender on demand any sum which may become due to the Lender by the Borrower whenever the Borrower shall fail to pay the same. It is understood that this guarantee shall be a continuing, unconditional and irrevocable guarantee and indemnify for such indebtedness of the Borrower. The Guarantor do hereby waive notice of default, non-payment and notice thereof and consent to any modification or renewal of the credit agreement hereby guaranteed.

(4) In the event of any default on the part of the Borrower in payment of any of loan liability referred to above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions, obligation and covenants contained in the said Agreement, the Guarantor shall, upon demand, forthwith pay to the Lender, without demur, all the amounts payable by the Borrower under the said Sanction Letter and the Said Agreement.



(5) Any renewals or extensions of time of payment of any of the aforesaid liability or indebtedness of the Borrower, any release, addition to or change of any security, also any change in the form of the liability or indebtedness of the Borrower will not alter or discharge any of Guarantors obligation to repay the Loan of the Borrower to the Lender

(6) AND in the event of the Borrower failing and/or neglecting or refusing to pay to the Lender, the amount remaining unpaid under any Loan/ any of the Agreement(s) and the Lender terminating the Loan Agreement and any of the Agreement(s) all the amounts then due and owing by the Borrower to the Lender and/or outstanding under the Loan/any of the Agreement(s) shall be due and payable by the Guarantor forthwith upon demand of the Lender.

(7) The liability of the Guarantor under this Guarantee shall not be discharged, released, altered or otherwise affected in any manner by reason of any arrangement or compromise made between the Borrower and the Lender or any forbearance or other indulgence whether as to payment, performance or otherwise given or and compromise and all defense, set off, counter-claims, recoupments and reductions, limitations and impairments.

(8) The Guarantor is aware that in the event of the Borrower committing a default under the said Sanction Letter and/or the said Agreement in repayment of outstanding loan amount alongwith interest, default interest, penal interest, charges, legal fees etc, and/or in performance of obligations/compliance under the said Sanction Letter and/or the said Agreement, all the amounts due and



outstanding under all the other accounts and the Agreements executed under the Loan Facility shall become immediately due and payable. The Guarantor hereby expressly agree that this Guarantee shall extend to or cover any and all such monies due and payable by the Borrower to the Lender and that liability and obligation of the Guarantor under this Guarantee shall remain valid and binding on the Guarantor till the Borrower is fully and completely discharged under the said Sanction Letter and the said Agreement.

(9)The Guarantor do hereby specifically waive the rights conferred on sureties by Sections 133, 134, 135, 139 and 141 of the Indian Contract Act. The Guarantor further agrees that the Guarantor will not be entitled to the benefit of subrogating to the securites if the same securities are held by the Guarantor for any other Indebtednees of the Borrower.

(10) The Guarantor further agree and confirm that this Guarantee shall not in any event be affected by reason of the Lender obtaining any other security or securities from the Borrower /Guarantor(s) nor will the Guarantee be affected by reason of the Lender failing to recover and realise any of the said securities. This Guarantee shall be in addition to and not in substitution for any other Guarantee or security obtained by the Lender. Further, the Guarantor herein confirms and declare that, this Guarantee is an integral part of the said Sanction Letter and the said Agreement and this Guarantee shall be read in conjunction with the said Sanction Letter and the said Agreement being the liability of the Guarantor towards the compliance of the terms and conditions of



the said Sanction Letter and the said Agreement

(11) The Guarantor, do hereby further declare that this Guarantee shall not in any manner be affected by reason of delays on the Lender's part to recover the amounts due to the Lender from the Borrower

(12) The Guarantor, expressly irrevocably and unconditionally agree that the Lender shall be entitled to enforce this Guarantee without making any demand on or taking any proceedings against the Borrower/other Guarantors for and/or all the amounts due and payable by the Borrower to the Lender under and in relation to the said Sanction Letter and the said Agreement

(13) The Guarantor hereby agrees that, all disputes, differences and/or claim arising out of this guarantee or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender, in the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new 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 proceeding shall be held in Mumbai.

(14) The Guarantor hereby agree and declare that, for enforcing



this guarantee by the Lender against the Guarantor, the Courts at Mumbai alone shall have jurisdiction and the Guarantor hereby submits to the same and agrees and undertakes that the Guarantor will not in any way object the same.

(15) The Guarantor hereby confirm and declare that this Guarantee shall be governed by and construed in accordance with the laws of India. Any disputes arising under/in relation to this Guarantee shall be subject.....”

14. A perusal of the same shows that respondent No. 2 has agreed to guarantee the loan obtained by respondent No. 1 in his capacity as a Director of respondent No. 1. The Deed of Guarantee serves as a security to the petitioner that respondent No. 1 would clear its financial obligations *qua* the petitioner in terms of the Loan Agreement.

15. The reliance by learned counsel for the petitioner is also correctly placed on ***Intec Capital Limited v. Shekhar Chand Jain & Anr, (2025) SCC OnLine Del 5787*** and more particularly paras 54 to 57 which read as under:

“54. Even assuming that Clause 4 of the Deeds of Guarantee amounts only to a reference to the Loan Agreement, the present case would still fall within the exception recognized in Inox Wind Ltd. (supra), wherein the Hon'ble Supreme Court held that in the context of standard form contracts, even a general reference is sufficient to incorporate the arbitration clause. In the present case, the Loan Agreement and the Deeds of Guarantee are standard form documents, thereby satisfying this test as well. The relevant paragraphs of the said decision read as under:



“18. We are of the opinion that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. In M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] this Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. In other words, general reference to a standard form of contract of one party will be enough for incorporation of arbitration clause. A perusal of the passage from Russell on Arbitration, 24th Edn. (2015) would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]. We are in agreement with the judgment in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]



with a modification that a general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause.”

(Emphasis applied)

57. In light of this exposition, the Loan Agreement and the Deeds of Guarantee, though distinct in form, are part of a single composite transaction executed on the same date and intended to govern the same commercial arrangement. The evident commercial intention was to secure the repayment of the loan by binding both the borrower and the guarantors to the same set of obligations, including the dispute resolution mechanism. The principle that contemporaneous documents forming part of a single transaction must be read together, as enunciated in Punjab National Bank Ltd. (supra), also fortifies the case of the appellant. Therefore, the present case squarely falls within the “single contract” scenario envisaged in Inox Wind Ltd. (supra) and the arbitration clause contained in the Loan Agreement stands duly incorporated into the Deeds of Guarantee.”

16. In view of the above discussion, it is evident that the Loan Agreement and the Deed of Guarantee constitute a single composite transaction executed contemporaneously to govern one commercial arrangement. The Deed of Guarantee merely secures the repayment obligations arising under the Loan Agreement and, therefore, binds both respondent No. 1 as



borrower and respondent No. 2 as guarantor. Their terms are interdependent, and the guarantee cannot be treated as an independent or standalone contract for the purposes of dispute resolution.

17. The contention that the arbitration clause in the Deed of Guarantee amounts to a separate arbitration agreement providing for a distinct venue is also misconceived. The clause in the Deed of Guarantee merely stipulates the venue of arbitration and does not determine the *seat* of arbitration. Hence, this distinction cannot be relied upon to segregate the dispute resolution mechanism under the Deed of Guarantee from that contained in the Loan Agreement.

18. Additionally, the reliance on ***Amit Guglani & Anr. vs. T Housing Finance Ltd. (2023) SCC OnLine Del 5206*** is well placed where the Coordinate Bench has held as under:

“27. Having come to a conclusion that the two agreements are inseparable and the dispute raised in the present petition can be only resolved by reading the covenants of both the agreements, the next question that falls for consideration is which of the two Arbitration Clauses can be invoked. It is an undisputed fact that the Tripartite Agreement contains an Arbitration Clause 27 where the venue of Arbitration is New Delhi while the Loan Agreement contains Arbitration Clause 12.3 which gives exclusive jurisdiction to the Courts at Kolkata.

...

30. From a reading of the aforementioned judgments of the Supreme Court, it clearly emerges that where there are two agreements which are connected and interlinked and both contain



Arbitration Clauses, which are not similar to one another, in order to determine the nature of the arbitral proceedings, the two documents have to be read in harmony or reconciled and parties should get the disputes resolved under the main or umbrella agreement. Applying these principles, this Court finds merit in the contention of the Petitioners that reference to arbitration has to be made by invoking the Arbitration Clause in the Tripartite Agreement which reads as follows:— “27. If any dispute, difference, claim or controversy (the “Dispute”) arises between the Parties about the validity, interpretation, implementation, or alleged breach of any provision of this Agreement, then the Parties shall negotiate in good faith to endeavor to resolve the matter. However, if the Dispute has not been resolved by the Parties within thirty (30) days after the date of receipt of written notice of the Dispute by either Party from the Party raising the Dispute, then Dispute shall be referred to a sole arbitrator appointed by the Lender. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 as updated. The venue of arbitration shall be at New Delhi. The award of arbitrator shall be final and binding on the Parties.””

19. I am of the view that the 2 Agreements have to be reconciled. It cannot be that for the purposes of enforcing the obligations under the Loan Agreement, the petitioner would invoke jurisdiction of Delhi and to enforce the Deed of Guarantee, the petitioner would be required to approach the Mumbai courts. Reading the two, I am of the view that the parent agreement is the Loan Agreement. The Deed of Guarantee only is a supplement



agreement incidental to the main agreement.

20. For the said reasons, the jurisdiction clause in the parent agreement will override the incidental agreement.

21. As regards the issue of filing a petition under Sections 14 and 15 is concerned, the same also deserves to be rejected.

22. As per Clause 7.9 of the Loan Agreement, the petitioner had the right to appoint the Arbitrator. The said clause no longer holds good in law in view of the pronouncements in *TRF Limited v. Energo Engineering Projects Limited* (2017) 8 SCC 377 and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760.

23. For the said reasons, the petitioner has to approach the Court for appointment of an Arbitrator and hence the petition is maintainable.

24. As regards the third objection on limitation, the timelines, when read in light of the Supreme Court's decisions in *Cognizance for Extension of Limitation, In re*, (2022) 3 SCC 117 and *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 5 SCC 313, make it clear that the period from 15.03.2020 to 28.02.2022 is required to be excluded for the purposes of computing limitation. The Loan Recall Notice was issued on 26.11.2019, and the petitioner therefore had three years to initiate proceedings. After excluding the COVID-19 period, the petitioner became entitled to a balance limitation period of 2 years and 8 months from 01.03.2022, which would extend the limitation period until 01.11.2024. The present petition, filed on 13.03.2024, thus falls well within the prescribed period of limitation.

25. For the said reasons, the petition is allowed and disposed of with the following directions:

- i) Dr. Amit George (Advocate) (Mob. No. 9910524364) 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.
 - 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) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

DECEMBER 5, 2025/DM

(Corrected and released on 13.12.2025)