Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION NO.531 OF 2026

Axis Finance Limited ... Applicant

Vs.

Inspira Enterprise India Limited ... Respondent

SHABNOOR AYUB PATHAN

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Date: 2026.09.29 11:17:40 +0530

Mr. Karl Tamboly with Mr. Gaurav Jangle, and Mr. Tanmay Bidkar i/by I.V. Merchant & Co., for the Applicant.

Mr. Harsh Moorjani with Mr. Samsher Gaud, Ms. Dhwani Parekh and Ms. Chaitali Kamble i/by Jayakar & Partners for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 23, 2026

PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. The present Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996. By this Application, the Applicant seeks appointment of an Arbitrator to decide the disputes, differences, and claims arising out of the Term Loan Agreement dated 22 November 2022, the Indenture of Mortgage dated 24 November 2022 and the other facility documents executed between the parties.

2. According to the Applicant, the facts leading to the filing of the present Application are as follows. The Applicant is a company incorporated under the Companies Act, 1956 and is engaged in providing financial assistance for purchase of vehicles. On 18 November 2022, the Applicant issued Sanction Letter bearing No. AFL/CO/2022-23/November/1453 and sanctioned a Rupee Term Loan Facility of Rs.100 Crores. Thereafter, on 22 November 2022, the Applicant and the Respondent executed the Term Loan Agreement. On 24 November 2022, the Respondent executed the Indenture of Mortgage in favour of the Applicant. By an email dated 15 March 2023, the Applicant demanded an amount of Rs.11,36,987/- from the Respondent on account of non-compliance with the post-disbursement conditions. After receiving the amount remitted by the Respondent, the Applicant issued a No Dues Certificate bearing Reference No. AFL/GOR/2026-27/ April/081.

3. On 8 May 2026, the Respondent issued a demand notice claiming repayment of the proportionate processing fee and additional interest. According to the Applicant, the total amount claimed by the Respondent was Rs.5 Crores. Thereafter, on 22 June 2026, the Applicant issued a demand notice calling upon the Respondent to pay Rs.1,15,85,747/-, being the amount claimed towards penal interest for non-compliance with the terms and conditions of the Agreement. It is in these circumstances that the Applicant has filed the present Application.

4. Mr. Tamboly, learned Advocate for the Applicant, submits that, in view of the aforesaid conduct of the Respondent, disputes,

and differences have arisen between the parties under Clause 14.5 of the Agreement.

5. The Applicant submits that, by its communication dated 16 March 2023, the Respondent, through its Vice President (Investments), Mr. Ajay Joshi, admitted that the No Objection Certificates from the existing lenders had not been obtained. The Respondent requested time up to September 2023 to complete this requirement. The Applicant submits that, by another communication dated 25 May 2023, the Respondent again admitted that the requirements had not been complied with and requested a period of at least three months to complete the pending requirements.

6. According to the Applicant, these communications amount to clear and unequivocal written admissions by the Respondent regarding its continuing obligations and defaults under the Facility. The Applicant seeks permission to rely upon the communications dated 16 March 2023 and 25 May 2023 when the same are produced before the Court.

7. The Applicant submits that thereafter, in or around March 2026, the Respondent approached the Applicant for foreclosure of the loan account relating to the Facility. Accordingly, the Respondent paid the entire outstanding principal amount of Rs.50,00,00,000/- in different instalments between 6 March 2026 and 12 March 2026, along with interest. Thereafter, the loan account bearing LAN No. SPCO0002990 was closed in the books of the Applicant.

8. The Applicant submits that, at no stage, either while requesting foreclosure of the Facility or at any other time, did the Respondent obtain any waiver, remission, or discharge from the Applicant in respect of the penal charges which had accrued or were continuing to accrue because of the Respondent's alleged non-compliance with the terms of the Facility. According to the Applicant, there was no express or implied waiver of these charges.

9. The Applicant submits that after receiving the amounts paid by the Respondent towards foreclosure of the Facility, the Applicant issued a No Dues Certificate dated 28 April 2026 bearing Reference No. AFL/GOR/2026-27/April/081. The Applicant released the title documents relating to the mortgaged property in favour of the Respondent.

10. The Applicant submits that the No Dues Certificate states that it was issued "subject to receipt of TDS certificate" in respect of an amount of Rs.5,52,729/-, which was recoverable as on 31 March 2026. Therefore, according to the Applicant, the No Dues Certificate was not an absolute or unconditional document. It was issued subject to the stated condition. The Applicant submits that, for this reason, the certificate cannot be treated as an unconditional discharge or as an accord and satisfaction of all the obligations between the parties under the Facility.

11. Mr. Tamboly, learned Advocate appearing for the Applicant, relying upon Clause 14.5 of the Loan Agreement, submits that the said clause contains an arbitration agreement between the parties. He submits that the definition of the expression "Legal

Proceedings" specifically includes arbitral proceedings. He relies upon Serial No. 29 of Schedule I to the Agreement, which forms part of the terms and conditions of the Loan Agreement and specifically states that the place of arbitration shall be Mumbai.

12. In reply to the submissions made on behalf of the Respondent, Mr. Tamboly submits that the words "the Borrower agrees" appearing in Clause 14.5(b) would cover the Applicant. He relies upon the judgment of the Supreme Court in *Visa International Ltd. v. Continental Resources (USA) Ltd.*, (2009) 2 SCC 55. According to him, while deciding whether an arbitration agreement exists, the Court has to consider the intention of the parties. For this purpose, the Court can consider the surrounding circumstances, including the conduct of the parties and the material available on record, such as the correspondence exchanged between them.

13. Mr. Moorjani, learned Advocate appearing for the Respondent, submits that, in the present case, there is no agreement between the parties by which the disputes are required to be referred to arbitration. The Sanction Letter dated 18 November 2022 specifically provides for the jurisdiction of the courts and tribunals at Mumbai, but it does not contain any arbitration clause. The Term Loan Agreement dated 22 November 2022 is a standard form agreement and does not contain any provision for referring disputes to arbitration. Clause 14.5, which is the Governing Law and Jurisdiction clause of the Term Loan Agreement, only provides that the courts or tribunals mentioned in Schedule I shall have exclusive jurisdiction.

14. It is submitted that the word "tribunals" used in Clause 14.5 cannot be understood to mean a private arbitral tribunal. This is clear from Clause 1 of the Term Loan Agreement, where the expression "Government Authority" refers to any court, tribunal or judicial body in India., Serial No. 29 of Schedule I only mentions the Place for Arbitration as Mumbai. Schedule I, however, is only a table containing certain particulars. It does not by create any operative obligation. It is submitted that there is no provision in the Term Loan Agreement which incorporates Serial No. 29 of Schedule I into an arbitration agreement or gives it any independent effect. There is no provision stating that disputes between the parties are required to be referred to arbitration. Merely mentioning a place of arbitration in a standard form schedule cannot, by, create an arbitration agreement when the operative provisions of the contract do not contain any such agreement. Such an entry cannot take the place of the essential agreement between the parties that their disputes would be decided by arbitration.

15. It is submitted that Clause 14.5(d) gives the Applicant a right to initiate Legal Proceedings before any other court or tribunal having competent jurisdiction. According to the Respondent, such a provision is inconsistent with the case now made by the Applicant that the parties had agreed to refer their disputes to arbitration.

16. It is submitted that, even according to the Applicant's own pleadings, the alleged defaults and breaches took place between January and March 2023. The Applicant raised a demand for

penal charges by its email dated 15 March 2023. The amount demanded was Rs.11,36,987/-, stated to have accrued from 7 January 2023 at the rate of Rs.13,699/- per day. It is submitted that the alleged breaches were, therefore, completed and were within the Applicant's own knowledge in the year 2023. The Respondent furnished the renewed commencement certificate on 16 March 2023. After that, the Applicant did not raise any demand or claim any penal charges for more than three years. According to the Respondent, the Applicant's right, if any, to take proceedings in respect of the alleged defaults arose, at the latest, in March 2023. Therefore, considering the provisions of the Limitation Act, the limitation period for such a claim expired by March 2026. The monetary claim now sought to be made by the Applicant is consequently, on the face of the record, barred by limitation.

17. It is submitted that the communications dated 16 March 2023 and 25 May 2023 cannot be treated as acknowledgments of liability towards the alleged penal charges. Even if the contents of those communications are considered, they only show that the Respondent sought some additional time to furnish the lender NOCs and other required documents. The Respondent never admitted any liability towards the alleged penal charges in those communications. Therefore, according to the Respondent, the said communications cannot be relied upon by the Applicant to contend that there was an acknowledgment of liability which could extend or restart the limitation period for the alleged claim towards penal charges.

18. While denying the Applicant's claim, it is submitted that the alleged claim had become clear, at the latest, on 25 May 2023. Even on that basis, the period of limitation expired in May 2026. The alleged invocation made by the Applicant on 22 June 2026 was, therefore, beyond the prescribed period of limitation. It is submitted that the Applicant cannot create a fresh cause of action merely by issuing demands or correspondence in the year 2026. Subsequent correspondence between the parties does not, by, extend or restart the limitation period. According to the Respondent, the fact that the Applicant chose to postpone recovery of a claim which had already arisen cannot amount to a disability recognised under the Limitation Act. It cannot revive a claim which had already become barred by limitation.

19. It is submitted that the alleged defaults related to obligations which were required to be performed on specified dates. They were one-time obligations. They cannot be treated as continuing breaches only for the purpose of extending the limitation period indefinitely. Once the alleged breaches took place and the Applicant became aware of them, the cause of action, if any, arose in favour of the Applicant and limitation began to run. The subsequent correspondence or demands between the parties cannot, in law, revive a claim which has already become time-barred.

20. In support of these submissions, Mr. Moorjani relies upon the following judgments:

(i) *South Delhi Municipal Corpn. v. SMS Ltd.*, (2026) 1

SCC 545, particularly paragraphs 46 to 48;

(ii) *Alchemist Hospitals Ltd. v. ICT Health Technology Services India Pvt. Ltd.*, 2025 12 S.C.R. 24, particularly paragraphs 11 to 18, 22 to 25 and 31;

(iii) *Karnataka Power Transmission Corpn. Ltd. v. Deepak Cables (India) Ltd.*, (2014) 11 SCC 148, particularly paragraphs 25 and 26;

(iv) *BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited*, 2025 7 S.C.R. 1275, particularly paragraphs 20 to 26;

(v) *Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture*, (2022) 20 SCC 636, particularly paragraphs 8 to 12;

(vi) *Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719, particularly paragraph 8;

(vii) *State of West Bengal & Ors. v. M/s B.B.M. Enterprises*, 2026 5 S.C.R. 154, particularly paragraphs 3 to 7; and

(viii) *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 5 SCC 313, particularly paragraph 68.

REASONS AND FINDINGS:

21. I have considered the submissions made by the learned Advocates for both sides. From the Indenture of Mortgage, it is seen that the Facility was given on the terms of the Term Loan Agreement and other Finance Documents. Therefore, the question which arises at this stage is whether the parties had in fact agreed

that their disputes will be referred to arbitration. The Respondent has raised the issue of limitation. Both these issues require consideration.

22. The Applicant depends upon Clause 14.5 of the Term Loan Agreement and Serial No. 29 of Schedule I. Clause 14.5 is having the title "Governing Law and Jurisdiction". In Schedule I, there is separate mention of "Place of Jurisdiction" and "Place for Arbitration", where Mumbai is shown as the place for arbitration. Therefore, both the Clause and Schedule are required to be read together. The issue cannot be decided only from the heading of Clause 14.5 or only from the entry at Serial No. 29.

23. Clause 14.5 on which the Applicant relies reads as follows:

> "14.5 Governing Law and Jurisdiction
>
> (a) This Agreement shall be governed by and construed in accordance with Indian law.
>
> (b) The Borrower agrees that the courts and tribunals as specified under Schedule I shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Financing Documents and that, accordingly, any Legal Proceedings arising out of or in connection with the Financing Documents shall be brought in such courts or tribunals, and the Borrower irrevocably submits to and accepts for and with respect to its property, generally and unconditionally, the jurisdiction of those courts or tribunals.
>
> (c) The Borrower irrevocably waives any objection, now or in future, to the venue of any Legal Proceedings and any claim that any such Legal Proceedings have been brought in an inconvenient forum.

(d) Nothing contained in this Clause shall limit any right of the Lender to initiate Legal Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Legal Proceedings in one or more jurisdictions preclude the taking of Legal Proceedings in any other competent jurisdiction, whether concurrently or not, and the Borrower irrevocably submits to and accepts for and with respect to its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Borrower irrevocably waives any objection it may have now or in the future to the laying of the venue of any Legal Proceedings and any claim that any such Legal Proceedings have been brought in an inconvenient forum."

24. The first submission of the Respondent is that Clause 14.5 is only relating to jurisdiction, and it is not an arbitration clause. On considering this submission, I find that there is substance in it. Clause 14.5(a) is regarding governing law. Clause 14.5(b) speaks about the courts and tribunals having jurisdiction. Clause 14.5(c) is regarding objection to the venue. Clause 14.5(d) keeps the right of the Lender to start Legal Proceedings before any other competent court or tribunal. Therefore, when all these provisions are seen together, there is no clear statement that the disputes between the parties shall be referred to arbitration. This becomes important because an arbitration agreement cannot be said to be there only because the word "tribunal" is used in the agreement or because there is a reference to arbitration in the Schedule. The parties must have agreed that their dispute will be decided by a private arbitral tribunal and that the decision given by such tribunal will bind the parties.

25. The Supreme Court in *South Delhi Municipal Corpn.*, while considering what is required for an arbitration agreement, has held in paragraph 46 that there must be a "Clear intent to arbitrate". The Supreme Court has held in paragraph 47 that these requirements have to exist together. In paragraph 48, the Supreme Court has explained that a dispute resolution clause becomes an arbitration agreement only when it shows clear intention to arbitrate, provides a binding adjudicatory process and satisfies the general requirements of arbitration.

26. In my view, Clause 14.5 does not satisfy this requirement. The Clause does not say that the disputes "shall be referred to arbitration". It does not say that an arbitral tribunal will be constituted for deciding the dispute. It does not say that the decision of such arbitral tribunal will be final and binding upon the parties. Therefore, the basic words which create an obligation to go for arbitration are not found in the Clause.

27. The Applicant has relied upon the definition of "Legal Proceedings". It may be that under the Term Loan Agreement this expression includes arbitral proceedings. But this definition cannot create an arbitration agreement. A definition clause only explains what a particular expression means wherever it is used in the agreement. It does not by make an obligation upon the parties that every dispute between them has to be referred to arbitration. If Clause 14.5 had stated that all disputes resulting in "Legal Proceedings", including arbitral proceedings, "shall be referred to arbitration", then the position may have been different. But such words have not been used by the parties. Clause 14.5(b), in

substance, says that the courts and tribunals mentioned in Schedule I shall have exclusive jurisdiction to settle disputes and that Legal Proceedings shall be brought before such courts or tribunals. Therefore, the reference to arbitral proceedings in the definition clause cannot be used for putting additional words into the operative part of the Clause which the parties themselves have not written.

28. The Applicant next relies upon Serial No. 29 of Schedule I, where the "Place for Arbitration" is stated to be Mumbai. I have considered this submission. This entry does show that the word "arbitration" has been used in the documents. It shows that Mumbai has been mentioned as the place for arbitration. Therefore, it cannot be said that the word has no meaning at all. But the question before the Court is not only whether the word "arbitration" is found in the documents. The actual question is whether the parties agreed to submit their disputes to arbitration. The Supreme Court has made this difference in several decisions. In *Alchemist Hospitals Ltd.*, paragraph 17, the Court held that "mere use of the word 'arbitration' in a clause" is not enough. The contents and the substance of the agreement must show what was intended by the parties. The same principle was considered by the Supreme Court in *Mahanadi Coalfields Ltd.* In paragraph 8, the Supreme Court relied upon *Jagdish Chander* and explained that the words in the agreement must show determination and obligation to go to arbitration. In paragraph 9, the Court considered a clause having the title "Settlement of Disputes/Arbitration". Even though the word arbitration was there

in the title, the substantive part of the clause did not create an arbitration agreement. Therefore, the Court considered what the clause required the parties to do and did not decide the matter only from the heading.

29. The same thing applies to the present case. The part of Clause 14.5 does not direct the parties to go before an arbitral tribunal. It refers to courts and tribunals having jurisdiction. Serial No. 29 mentions a place for arbitration. But it does not say who will conduct the arbitration, how the arbitration will be started, that the dispute has to be compulsorily referred to arbitration, or that the decision of the arbitral tribunal will bind the parties. The words in Serial No. 29 become more relevant when they are seen along with Serial No. 28 of Schedule I. Serial No. 28 separately mentions the "Place of Jurisdiction", while Serial No. 29 mentions the "Place for Arbitration". Therefore, it appears that the difference between jurisdiction and arbitration was known when the Schedule was prepared. Still, the operative part of Clause 14.5 does not contain a agreement requiring the parties to go to arbitration.

30. The Applicant submits that the entry regarding the "Place for Arbitration" must be given effect because the whole contract has to be read together. There is no dispute with the general principle that a contract should be read as a whole. But reading the whole document together does not mean that the Court can put an obligation into the agreement which the parties have not stated. The intention has to be gathered from the words which the parties have used.

31. The Supreme Court in *Bangalore Electricity Supply Co. Ltd. v. E.S. Solar Power (P) Ltd.*, (2021) 6 SCC 718, as referred to in *Alchemist Hospitals*, has stated that the Court should not try to find out some undisclosed intention in the minds of the parties. The Court has to see the meaning of the words used. In the present case, the words used give jurisdiction to courts and tribunals. They do not say that the disputes are required to be referred to a private arbitral tribunal.

32. The Applicant has submitted that the word "tribunals" used in Clause 14.5 should include an arbitral tribunal. Even if it is accepted that, in a suitable agreement, the word tribunal can include an arbitral tribunal, the difficulty in the present case still remains. Clause 14.5 does not only use the word "tribunal". It says "courts and tribunals as specified under Schedule I". It uses the expressions "Legal Proceedings", "court or tribunal of competent jurisdiction" and proceedings in different jurisdictions. The language of the Clause appears more to be regarding jurisdiction of courts or other competent forums. It does not provide that the disputes have to be compulsorily referred to arbitration.

33. An arbitral tribunal gets its authority from the consent of the parties. A civil court or statutory tribunal gets its jurisdiction from law. Therefore, the agreement must show that the parties have consented to give the power of deciding their disputes to a private arbitral tribunal. In the present Clause 14.5, such consent is not found in clear and operative words.

34. Clause 14.5(d) creates difficulty for the Applicant. It provides:

> "Nothing contained in this Clause shall limit any right of the Lender to initiate Legal Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Legal Proceedings in one or more jurisdictions preclude the taking of Legal Proceedings in any other competent jurisdiction, whether concurrently or not…"

35. Thus, this provision keeps a right with the Lender to proceed before other competent forums. If the parties had intended that their disputes must compulsorily go to arbitration, the agreement would show that arbitration was selected as the forum for deciding those disputes. Here, the wording keeps open the right to proceed before other courts or tribunals. This does not support the submission that a concluded arbitration agreement was made between the parties.

36. The Applicant has relied upon *Visa International Ltd*, and has submitted that the intention of the parties can be gathered from surrounding circumstances, correspondence and conduct. There is no difficulty in accepting this general principle. However, the surrounding circumstances must show an agreement satisfying Section 7. Such circumstances cannot themselves create an arbitration agreement when the language does not show such agreement. I have considered the correspondence relied upon by the Applicant. The demand notice dated 22 June 2026 states that Rs.1,15,85,747/- is claimed towards penal charges or penal interest. It states that, if the amount is not paid, the notice may be treated as a notice under the Arbitration and Conciliation Act,

1996 “invoking Arbitration under Clause 14.5 read with Schedule I”. This part of the notice is relevant. The Applicant invoked arbitration in the notice dated 22 June 2026. The notice does not point out any earlier communication by which the parties had already agreed to arbitration. The Applicant is relying upon Clause 14.5 as the source of its right to invoke arbitration.

37. A later correspondence cannot take the place of the original arbitration agreement unless that correspondence satisfies Section 7. In paragraph 31 of *Alchemist Hospitals*, the Supreme Court considered a similar question and held that where there was no arbitration agreement in the first place, subsequent correspondence could change the position only when it and unequivocally showed an agreement to refer the dispute to arbitration. Therefore, when the original arbitration agreement is not there, the later correspondence cannot by supply the missing agreement.

38. In the present case, the communications dated 16 March 2023 and 25 May 2023 relied upon by the Applicant relate to the lender NOCs and other requirements which were pending. The Respondent says that these communications were only requests for extension of time and did not amount to an admission of liability towards penal charges. Even if these communications are considered in the manner stated by the Applicant, they do not contain any agreement to refer the disputes to arbitration. Therefore, they cannot remove the basic difficulty which is found in Clause 14.5.

39. I find on the first issue that the parties did not enter into a concluded and binding arbitration agreement under Clause 14.5 of the Term Loan Agreement. The words "Place for Arbitration" appearing in Schedule I are not sufficient to create such an agreement. The definition of "Legal Proceedings" cannot create it. The use of the word "tribunals" is not enough. The subsequent demand notice dated 22 June 2026 cannot by create an arbitration agreement between the parties. This finding is sufficient for deciding the present Application under Section 11. The power under Section 11 to appoint an Arbitrator can be exercised when there is an arbitration agreement between the parties. When the basic agreement to refer the dispute to arbitration is not found, there is no arbitral reference which can be made by this Court.

40. On considering the Agreement, Schedule I, the correspondence and the submissions of both sides together, I do not find it possible to accept that Clause 14.5 read with Schedule I constitutes a valid arbitration agreement between the parties. The present Application under Section 11 cannot be allowed. The parties, however, will remain at liberty to take such other remedies as may be available to them in law and under the documents.

41. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Arbitration Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 is rejected;

(ii) The issue of limitation raised by the Respondent is not adjudicated upon, as the Application fails for want of a valid arbitration agreement. All rights and remedies of the parties in respect of their substantive claims and contentions are kept open, to be pursued before the forum otherwise competent in accordance with law;

(iii) The Arbitration Application stands disposed of in the above terms;

(iv) There shall be no order as to costs.

(AMIT BORKAR, J.)