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

+ **ARB.P. 921/2021 & I.A. 12229/2021**

PANSARI DEVELOPERS LIMITED Petitioner
Through Ms. Eshna Kumar, Mr. Anup
Jain and Udit Gupta, Advs.

versus

DHANI LOANS AND SERVICES LIMITED & ORS.
..... Respondents
Through Ms. Surbhi Mehta, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
20.09.2021

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for reference of the dispute between the parties.

2. The dispute arises out of a Loan Agreement dated 30th June, 2018 between the petitioner and the respondents. The grievance of the petitioner, against the respondents, is that the respondents were charging interest, on the amounts lent to the petitioner at rates higher than those stipulated in the loan agreement. This interest, according to the petitioner, is returnable by the respondent. The respondents dispute the claim.

3. The loan agreement contains the following arbitration clause:

“ARTICLE 12: ARBITRATION

12.1 This Loan Documents is/shall be governed by Indian laws and the courts at New Delhi shall have exclusive jurisdiction relating to any matter/issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary, if any dispute/disagreement/differences (“Dispute”) arise between the Parties (including any Borrower(s) during the subsistence of the Loan Documents and/or thereafter, in connection with, *inter alia*, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by the Lender only. In any circumstance, the appointment of the sole arbitrator by the Lender shall be and shall always be deemed to be the safe means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi or such other place as may be notified by the Lender and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law;”

4. In view of the law laid by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹, *Bharat Broadband Network Ltd. v. United Telecom Ltd.*² and *TRF Limited v. Energo Engineering Projects Ltd.*³, the afore-extracted arbitration clause is unenforceable, as it confers exclusive jurisdiction, to appoint the arbitrator, on one of the parties to the agreement.

¹ 2019 SCC Online SC 1517

² (2019) 5 SCC 755

³ (2017) 8 SCC 377

5. Ms. Mehta, learned Counsel for the respondents, merely requests that the arbitrator be selected from one of the arbitrators on the panel maintained by the respondents.

6. As the parties between themselves have not been in a position to agree on the arbitrator, the task of appointing the arbitrator devolves on the court under Section 11(6).

7. The arbitration clause is, as has correctly been pointed out by learned Counsel for the petitioner, is in the teeth of the law laid in *Perkins Eastman*¹, *Bharat Broadband*². and *TRF Limited*³ as well as Section 12(5) of the 1996 Act and is, consequently, unenforceable.

8. The amount in dispute, I am informed, is to the tune of around ₹ 1 crore.

9. Accordingly, I appoint Mr. M.C Gupta, Additional District Judge (retd.)(Mob: 9910384727), as the arbitrator to arbitrate on the dispute between the parties.

10. The learned Arbitrator would be entitled to charge fees in accordance with the Fourth Schedule of the 1996 Act, or as agreed in consultation with the parties.

11. The arbitrator would file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

12. This petition stands allowed in the aforesaid terms, with no orders as to costs.

C. HARI SHANKAR, J.

SEPTEMBER 20, 2021

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