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

% ***Date of decision: 26.10.2021***

\+ ARB.P. 1049/2021 & I.A.13814/2021

PRET STUDY BY JANAK FASHIONS PRIVATE LIMITED ..... Petitioner

Through Ms.Vanika Gupta, Adv.

versus

DHANI LOANS AND SERVICES LIMITED ..... Respondent

Through Ms.Sangeeta Sondhi, Ms.Ruchi Gour Narula & Mr.Gorang Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T ***(oral)***

1. The relief sought in the present petition before this Court is to appoint sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate the dispute between the parties.

2. Pertinently, petitioner is engaged in the business of retail of garments all over the country under its brand “Study by Janak” and has become one stop shop for luxury Indian designer wear and couture for its customers. On the other hand, respondent is a Non-Banking Financing Company (NBFC).

3. As per the version of petitioner, it got sanctioned three loan facilities

from the respondent of Rs.15 crores vide agreement dated 25.04.2018; Rs.1.60 crores vide agreement dated 28.04.2018; and Rs.10 lakhs vide agreement dated 28.04.2018 but the present petition is with respect to the loan facility of Rs.15 crores only. Petitioner got sanctioned a loan facility of Rs.15 crores against property from the respondent and the loan was on adjustable interest rate for a period of 144 months by way of 144 equated monthly instalments starting from 05.06.2018 till August 2030. As per the repayment schedule dated 13.07.2018, total number of EMIs were increased from 144 months to 147 months i.e. until 05.08.2030 and rate of interest was also increased from 12% p.a. to a fixed rate of interest of 12.20% p.a. w.e.f. 05.07.2018, after first instalment paid on 05.06.2018 without any prior intimation. Thereafter on 05.09.2018, respondent increased rate of interest from 12.20% p.a. to 12.50% and from then onwards, respondent increased rate of interest upto 15.95% p.a. on 05.02.2019.

4. Counsel for the petitioner further submits that petitioner received revised repayment schedule dated 27.12.2019 from the respondent as per which respondent increased the term of EMIs of the loan facility from 144 months to 379 months. Upon this, petitioner made a written complaint to the respondent for arbitrary and wrongful increased rate of interest without prior

intimation or consent of the petitioner. Petitioner also stated in the complaint that as per the guidelines of the Reserve Bank of India, increase in the rate of interest ought to be made applicable after intimation and confirmation by the borrower, therefore, enhanced rate of interest could not be made applicable prior to that date. However, respondent did not respond to the abovesaid complaint of the petitioner.

5. It is further submitted that in the month of November, 2020, petitioner again approached the respondent for releasing of one of three properties situated at Karol Bagh, New Delhi secured against the three loans and in return, petitioner was willing to partially prepay all three loan facilities. Upon this, respondent issued a conditional No Objection Certificate (NOC) on 13.01.2021 wherein it was agreed to release the said property subject of payment of Rs.14,83,95,000/-. On 15.01.2021, petitioner made the payment and requested the respondent to release the charge against the property situated at Karol Bagh in respect of the conditional NOC wherein as per the NOC, respondent was to adjust Rs.14,78,09,904/- towards the principal of loan facility of Rs.15 crores and an amount of Rs.5,85,096/- would be left as principal outstanding amount which had to be paid by the petitioner. Thereafter, respondent had illegally deducted EMI of Rs.2,52,088/- from

petitioner's bank account since 05.02.2021 and on 23.06.2021 issued a notice under Section 13(2) of the SARFAESI Act.

6. At the hearing, learned counsel for petitioner submitted that petitioner has already invoked arbitration vide notice dated 19.08.2021 under clause 12 of the agreement and prayed this Court to appoint an Arbitrator to adjudicate the disputes between the parties, which is not disputed by learned counsel for respondent. However, the claims made in the present petition are disputed and the same can be adjudicated by an Arbitrator.

7. Accordingly, **Mr. Justice (Retd.) Vinod Goel (Mobile:9910384637)** is appointed sole Arbitrator to adjudicate the disputes between the parties.

8. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The present petition is accordingly disposed of.

10. A copy of this order be sent to DIAC and the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 26, 2021/ab