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

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Date of decision: 22.12.2021

+ ARB.P. 1104/2021

HERO FINCORP. LIMITED

..... Petitioner

Through Ms.Saloni Jain, Adv.

versus

VARUN MAHINDER JAJOO & ORS.

..... Respondents

Through Md.Irshad, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties. Pertinently, petitioner is a non-banking financial company engaged inter alia in the business of rendering finance/loan facilities to the borrowers.

2. According to the petitioner, pursuant to the specific representations inter-alia with respect to adherence of the terms of repayment of the Loan Facility, petitioner Company vide Sanction Letter bearing Reference No.3038827 dated 22.03.2018 sanctioned a Composite Loan Facility in the sum of Rs.5,50,00,000/- jointly in favour of the respondent Nos.1 to 4. Out

of the total sanctioned loan amount of Rs.5.50 Crores vide Loan Account/Agreement Nos. HCFDELLAP00002323034 and HCFDELLAP00002322747, the "First Tranche" of Rs.3,00,00,000/- and the "Second Tranche" of Rs.2,50,00,000/- were disbursed by the petitioner Company in favour of the Respondent Nos.1 to 4.

3. Learned counsel for the petitioner submits that a written Loan Agreement dated 23.03.2018 was executed between the Respondent Nos.1 to 4 as Borrowers/Co-Borrowers and the Petitioner Company as Lender in respect of the afore referred Loan Facility. The Respondent No.5 guaranteed the due repayment of the aforesaid loan as well as adherence of the terms conditions and covenants envisaged in the aforesaid Loan Agreement by respondent Nos.1 to 4, in their personal and individual capacity and consequently, executed a Deed of Guarantee 23.03.2018, in favour of the petitioner-Company. As per the terms mutually agreed between the respondents and the petitioner-Company, repayment of the said Loan was secured by way of "Mortgage/Security" of immovable properties as detailed in para no.6 of the plaint.

4. It is further submitted that since the respondents failed to adhere to the terms of the repayment of the said loan transaction, petitioner vide notice

dated 06.07.2021, was constrained to "recall" the said loan facility and consequently demanded the total outstanding dues from the respondents, within seven days of the receipt of the said notice. However, the respondents have not complied with the said notice as well.

5. Petitioner-Company invoked arbitration clause as contemplated in clause 13 of the Loan Agreement dated 23.03.2018 and in clause 32 of the Deed of Guarantee dated 23.03.2018 and duly intimated the Respondents vide written communication dated 27.07.2021 that it has appointed Mr. Anuj Sehgal, Advocate, C-89, Sector-47, Noida as the Sole Arbitrator to adjudicate the afore-referred claims/ disputes and sought their concurrence/agreement to his appointment/nomination as the Sole Arbitrator within 30 days of the receipt of the said communication. Despite expiry of 30 days period, from the respective dates of receipt of the afore referred communication dated 27.07.2021, respondents neither responded to the same nor gave any concurrence.

6. During hearing, learned counsel for petitioner has prayed that sole Arbitrator may be appointed to adjudicate the dispute between the parties.

7. Learned counsel for respondent has objected to the averments made in the present petition however, has submitted that the disputes are arbitrable.

8. In view of the above the present petition is allowed. Accordingly, **Mr.Justice (Retd.) S.N. Dhingra (Mobile: 9871300027)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

9. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

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

11. The present petition stands disposed of accordingly.

12. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 22, 2021

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