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

% ***Date of decision: 14.01.2022***

+ **ARB.P. 51/2022**

M/S METALROD PVT. LTD. Petitioner
Through Mr. Mohit Chaudhary, Mr. Kunal
Sachdeva and Ms. Anubha, Advs.

versus

M/S Y.K. HOSPITALITY & ORS. Respondents
Through Mr. Zorawar Singh, Adv. for R-1 to 4
Mr. Sanjeev, Adv. for R-5 to 7

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

I.A. 708/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes between the parties.

4. As per the averments made in the present petition, petitioner is landlord of a Banquet Hall namely 'All Heavens' situated at Wazirpur Industrial Area, New Delhi-110052 . A registered Lease Agreement dated
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08.11.2019 was executed between petitioner and respondent Nos.1 to 4 (Y.K. Hospitality and its partners) as tenants of basement/ground/first/second and terrace of the 2300 sq. yards of the property No. B-97, Wazirpur Industrial Area, New Delhi-110052. Further, the possession of the property was given on 27.08.2019 with rent free period till 31.05.2020. It is further averred that as on date, amount which respondent Nos.1 to 4 are liable to pay towards the rental and other charges is Rs. 6,52,21,326/- and they have defaulted in making payment of rent. On 25.12.2020, respondent Nos.1 to 4 assured to make payment along with the interest and on having faith upon such assurance, petitioner and respondent Nos.1 to 4 entered into an Agreement dated 25.12.2020, wherein the said respondents obliged to pay the dues in terms mentioned therein (terms are stated on pdf pg no. 28 of the plaint). However, despite taking Concessions, respondent Nos.1 to 4 failed to do so. Thereafter, petitioner issued a demand notice dated 03.08.2021 to respondent Nos.1 to 4 seeking recovery of Rs. 5,14,56,174/-. which was later on withdrawn by petitioner on the condition that the respondent Nos.1 to 4 shall make payment of Rs.10 lac per month to petitioner. An agreement/MOM dated 09.08.2021 was signed between petitioner and respondent Nos.1 to 4 whereby apart from



agreeing to pay rentals immediately, respondent Nos.1 to 4 agreed to refer disputes before an Arbitrator in terms of the Arbitration and Conciliation Act, 1996 and it was decided that the decision of the learned Arbitrator shall be final and binding by and between the parties. The seat/venue of the arbitration was decided to be at New Delhi, and the arbitration expenses were decided to be borne by all the parties in equal sharing ratio. Despite signing MOM dated 9.8.2021, no payment was made and a notice of termination and handing over possession under Section 106 of TP Act was served upon the tenants on 6.12.2021.

5. It is further averred that for the aforesaid property, petitioner took loan from respondent Nos.5 to 7 (i. Harshit Finevest Pvt. Ltd. ii. Bon Lon Pvt. Ltd. and iii. Bon Lon Securities Ltd.) for the total sum of Rs. 25 cores vide one Loan Agreement dated 28.09.2020 and two Loan Agreements dated 29.09.2020. The loan amounts were to be paid in EMIs. It is further averred that present is a case where inter-linked chain of transaction, involve business relation amongst 4 parties and non-payment of dues by one party (i.e. respondent Nos.1 to 4), has led to domino effect resulting in default by the petitioner in repayment of EMIs to respondent Nos.5 to 7. As the respondent Nos. 1 to 4 have defaulted in paying the rental amount and other



charges, petitioner was not able to pay EMIs and in September, 2021, respondent Nos.5 to 7 issued three separate legal notices to petitioner seeking invocation of arbitration clauses mentioned in their respective agreements. Pursuant to order dated 09.12.2021 passed by this Court in OMP (I) (Comm.) 402/2021, deficient amount was deposited by respondent Nos.1 to 4 and the same was duly credited to respondent Nos.5 to 7 by petitioner herein.

6. During the course of hearing, learned counsel appearing on behalf of respondent Nos.1 to 4 as well as learned counsel for respondent Nos.5 to 7 have not objected to the appointment of Sole Arbitrator to adjudicate the dispute between the parties, however, has submitted that since there are four agreements executed between the petitioner and respondents, therefore, sole Arbitrator so appointed may adjudicate the dispute through two different arbitration proceedings and also that all issues be kept open before the learned Arbitrator.

7. The aforesaid submission made by learned counsel for respondents is acceptable to counsel for petitioner.

8. Accordingly, the present petition is allowed and with the consent of counsel for the parties, **Ms. Justice (Retd.) Gita Mittal** is appointed sole



Arbitrator to adjudicate the dispute between the parties.

9. Learned Arbitrator shall adjudicate the dispute through two different arbitration proceedings, i.e. one, qua Agreement recorded in minutes of meeting dated 09.08.2021 between petitioner and respondent Nos.1 to and second, arbitration in respect of Loan Agreement dated 28.09.2020 and two loan agreements dated 29.09.2020 between petitioner and respondent Nos.5 to 7.

10. The learned Arbitrator shall quote the fee after consultation with the parties. 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

JANUARY 14, 2022/rk