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

% ***Date of decision: 10.01.2022***

+ **ARB.P. 594/2021**

HERO FINCORP LIMITED

..... Petitioner

Through **Mr. Soham Kumar and Ms. Prarthana
Singhania, Advs.**

versus

S R STORE AND ORS

.... Respondents

Through **Ms. Tulip De, Mr. Ashish Sharma and
Mr. Varun Mohan, Advs.**

**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(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator in terms of clause 13 of the Loan Agreement, executed between the parties.

2. Petitioner is a company registered under the Companies Act, 1956 and registered with Reserve Bank of India. As per the averments made in the present petition, respondents approached the petitioner and sought financial assistance in the form of loan against property. Respondents represented sufficient means to repay the proposed financial facility. Petitioner agreed to

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grant financial facility to the tune of Rs.3,71,00,000/- to the respondents vide Sanction Letter dated 29.12.2017 in the nature of loan against property. Pursuant to the sanction of the said financial facility, Loan Agreement and Addendum Agreement, dated 30.12.2017 were executed between the parties. Respondents had agreed to pay interest at the rate of 9.25% per annum, payable on monthly basis to the petitioner. It was agreed that the respondents shall repay the financial facility within 180 months. It was further agreed that a penal interest charge of 2.00% per month shall be levied in case of delayed payment on the overdue amount. Subsequently, in order to secure the financial facility, the two Memorandums of Deposit of Title Deeds dated 30.12.2017 were executed by respondent Nos.3 and 6 and by respondent Nos. 4 and 5, respectively, in favour of the petitioner for two separate properties. However, respondents miserably failed to adhere to the terms and conditions of the loan agreement and defaulted in the payment of the loan.

3. Learned counsel for petitioner submits that petitioner served a loan recall notice dated 02.01.2020 upon the respondents whereby the Loan Agreement was terminated and the respondents were called upon to pay a sum of Rs. 3,67,19,659.40/- along with the applicable interest and other



charges under the loan documents, within a period of 7 days from the receipt of the said notice. Respondents vide their reply dated 17.01.2020 denied executing any agreement, however, admitted the existence of the Sanction Letter. Thereafter, petitioner invoked arbitration by notice dated 04.01.2021 to respondents. On 12.01.2021, respondents, vide their reply to the said notice denied entering into any Loan Agreement with the petitioner. Petitioner issued a Letter of Appointment dated 08.02.2021 to Mr. Satyam Thareja, Advocate, appointing him as the arbitrator to adjudicate the disputes between the parties, upon failure on the part of the respondents to act upon the notice invoking Arbitration. Thereafter, respondents vide reply 15.02.2021 challenged the appointment on the ground that they were not provided an opportunity of being heard before the said appointment.

4. During the course of hearing, it is submitted that petitioners issued a letter dated 25.02.2021 to the learned Arbitrator, Mr. Satyam Thareja, requesting him to terminate his mandate and the same was terminated 01.03.2021. Hence, the present petition has been filed.

5. On the other hand, learned counsel appearing on behalf of respondent has disputed the claims raised in the present petition. However, learned counsel has submitted that sole Arbitrator be appointed by this Court to



adjudicate the dispute between the parties subject to all issues to remain open before the learned Arbitrator.

6. Accordingly, **K.K.Sharma, Senior Advocate** (Mobile: 9810011519) is appointed sole Arbitrator to adjudicate the dispute between the parties.

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

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

9. The present petition stands disposed of accordingly.

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

(SURESH KUMAR KAIT)
JUDGE

JANUARY 10, 2022/rk