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

% ***Date of decision: 01.02.2022***

+ ARB.P. 1232/2021

TATA CAPITAL FINANCIAL SERVICES LTD. Petitioner
Through: Mr. Arvind Jordan, Advocate

Versus

M/S FOCUS IMAGING RESEARCH CENTRE PVT. LTD.
..... Respondent
Through: Mr. Priyank Kher, Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with respondent.
2. Petitioner-Tata Capital Financial Services Ltd. claims to be engaged in the business of financing as a NBFC, *interalia*, Business Loans Against Properties, Personal Loans, Vehicle Loans etc. According to petitioner, respondents as Borrower & Co-borrowers respectively applied and availed financial assistance as a Business Loan from petitioner and based on the representations and documents presented by respondents, petitioner

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approved, sanctioned and disbursed a business loan amounting to Rs.60,00,000/- (Rupees Sixty Lakhs Only) vide Loan Loan Cum-Guarantee TCFBL0386000010050327 dated 12.04.2018. The said loan was repayable with interest @ 13% p.a. in 36 monthly instalments whereunder first instalment got due on 09.05.2018, starting from 2.04.2018 till 09.04.2021. According to petitioner, till 19.09.2019, respondent made the part payments, however, thereafter they turned highly irregular and defaulted in repayment as per the schedule.

3. During the hearing, learned counsel for petitioner has submitted that despite repeated reminders and Loan Recall Notice dated 14.02.2020 amounting to Rs.38,16,216/- from the petitioner, respondents have committed the breach of terms of loan agreement dated 12.04.2018 and therefore, in terms of Clause-19 thereof, the disputes are liable to be settled through arbitration.

4. Pertinently, petitioner in the present case had invoked arbitration and appointed sole Arbitrator, however, the learned Arbitrator recused himself from said proceedings. Thereafter, petitioner approached High Court of Madras and preferred a petition being O.P. No. 144 of 2021 under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of sole



Arbitrator as provided under Clause -19 of the Loan Agreement dated 12.04.2018. Vide order dated 14.07.2021 the said petition was dismissed as not maintainable being without jurisdiction, while giving liberty to the parties to approach this Court. Hence, the present petition has been filed.

5. Today, Mr. Tomar, learned counsel has entered appearance on behalf of respondent and he submits that the claims raised in the present petition are disputed, however, fairly conceded that the disputes *inter se* parties are arbitrable. Learned counsel also submitted that respondent has no objection if disputes are referred to an independent arbitrator appointed by this Court.

6. Since counsel representing both the sides have consented that the disputes are arbitrable and an independent Arbitrator be appointed by this Court, the present petition is allowed.

7. Accordingly, **Mr. D.S. Pawaria, DHJS (Retd.) (Mobile: 9999621110)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

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

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



10. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 01, 2022

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