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

% ***Date of decision: 02.02.2022***

\+ ARB.P. 1253/2021

SEETHA KUMARI ..... Petitioner

Through Mr.Ankit Shah & Ms.Tanzeela Mubashsharah, Advs.

versus

BAJAJ FINANCE LIMITED ..... Respondent

Through Mr.Paras Parekh, 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 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- Seetha Kumar claims to be engaged in a borrower-lender relationship with the respondent since 2015. Petitioner had availed Loan Against Securities from respondent between 2015 to 2018 which came to be paid off in full. Around September 2018, petitioner further availed loan against securities for an amount of Rs.10 crores for the period of 24 months. Petitioner was granted additional loan of Rs.10 crore for a period of 24

months vide letter dated 02.05.2019 and Loan cum Pledge cum Guarantee Agreement dated 03.05.2019. Accordingly, the total sanctioned loan was Rs.20 crores, which was adequately secured by holding securities in form of shares of two listed companies namely, Hinduja Global Solutions Ltd. and Jindal Poly Film Ltd. with margin of 100% to the satisfaction of the respondent.

3. Learned counsel for petitioner has submitted that margin of 100% was always maintained throughout the tenure of the said loan except on one occasion for one day, which was triggered due to the heavy crash in Indian and World Stock Markets because of the unprecedent Covid crises in the month of March, 2020. Even that day i.e. on 25.03.2020, the margin did not trigger or fall below 85% mark. Thereafter, on 25.03.2020, respondent sent an email to the petitioner at around 10:37 a.m. to replenish the shortfall in the margin within a day and the account of the petitioner stood overdrawn by Rs.27,15,671/-. Immediately within less than an hour of receiving the abovesaid email, petitioner replenished the shortfall and informed the respondent's concerned officer.

4. Learned counsel for petitioner further submits that on 26.03.2020, petitioner again received an email from respondent calling upon the

petitioner to execute the sale of the scripts pledged with respondent on 25.03.2020. Again on 27.03.2020, petitioner received another email from respondent calling upon the petitioner under clause 4 of the agreement to repay entire principal amount of Rs.19,25,58,527/-. Learned counsel submits that despite repeated representations made to the respondent, the valuable securities of Hinduja Global Solutions Limited were sold by respondent Company at a throw away price on or about 09/10.07.2020. The market value of those as on date is more than Rs.1200/- and this has caused grave and immense loss to the petitioner of more than Rs.20 crores.

5. Thereafter, petitioner sent notice dated 15.12.2020 and invoked arbitration under Clause- 8 of the Loan cum Pledge cum Guarantee Agreement with regard to LIS No.49721. But till date no arbitrator has been appointed by the respondent and hence, the present petition has been filed.

6. Today, 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.

7. 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.

8. Accordingly, **Mr. Justice (Retd.) Dipak Misra, former Chief Justice of India (Mobile: 9560333111)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

9. The learned Arbitrator shall decide the fee after consultation with the parties.

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

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

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 02, 2022
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