

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

% **Date of order : 27th March, 2023**

+ **ARB.P. 32/2023**
M/S HERO FINCORP LTD Petitioner
Through: **Mr. V. D' Costa and Mr.**
Himanshu Sharma, Advocates

versus

M/S SHAHDARA X-RAY AND PATHOLOGY CENTRE &
ORS. Respondents
Through: **Ms. Nidhi Mehrotra and Mr.**
Pratyush Preet Singh, Advocates
for R-1 to R-5

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (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 between the parties arising *qua* the Loan Agreements dated 30th January, 2016 and 26th February, 2016.
2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a non-banking financial company duly incorporated under the Companies Act, 1956 and the respondent No. 1 is a proprietorship firm of which respondent No.2 is the proprietor and the respondents No.3 (through her legal heir), 4 and 5 are the co-borrowers of the loan provided to the respondent No. 1.
3. It has been submitted on behalf of the petitioner that the petitioner

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was jointly approached by all the respondents to advance a loan of Rs. 4,89,00,000/- which facility was sanctioned by the petitioner company in favour of the respondents vide sanction letter bearing reference no. HFCL/LAP/01-24/2016 dated 31st January, 2016. It is further submitted that the respondents received the aforementioned facility for a total of 180 months at a variable rate of 12.50% annually. The petitioner further asserts that the sanction letter also stated that the respondents would be responsible for paying a punitive interest rate of 2% per month on the past-due sum if they failed to make timely payments of the EMI and the extra fees.

4. It has been further submitted that the petitioner terminated the loan agreements in accordance with Clause 10A(iii) of the loan agreement and recalled the entire outstanding loan amount of Rs.4,53,21,661.64 only payable on 27th October, 2021 through the loan recall notice dated 2nd November, 2021 due to the respondent's appalling failure to abide by the terms and conditions of the loan agreements.

5. It has been submitted on behalf of the petitioner that despite receiving the aforementioned recall notice, the respondent disregarded its terms. Resultantly, the petitioner invoked Section 13(2) of the SARFAESI Act, 2002, and issued a statutory demand notice on 18th February, 2022, requesting payment of the outstanding debt in the absence of which the petitioner would exercise all of its rights under the SARFAESI Act, 2002.

6. Learned counsel appearing on behalf of the petitioner submitted that being aggrieved by the illicit acts of the respondent, the petitioner was constrained to invoke the arbitration clause, i.e., clause 14.4, vide

legal notice dated 6th December, 2022. It is submitted that the said notice has not been replied by the respondent.

7. In view of the foregoing submissions, the petitioner is requesting the appointment of an independent sole arbitrator for redressal of disputes between the parties.

8. Learned counsel appearing on behalf of the respondents no. 1 to 5 submitted that the reply has been filed vide Diary No. 558988/2023 but the same is not on record. During the course of arguments, she submitted the reply before this Court which has been taken on record.

9. Learned counsel appearing on behalf of the respondent vehemently opposed the averments made in the instant petition and submitted that the alleged loan agreement placed on record the by the petitioner is forged and fabricated as respondent no. 5 has never signed or executed the same. It is further submitted that signatures of respondent no. 5 is forged by the petitioner.

10. It is submitted on behalf of the respondents that the petitioner sanctioned the facilities in the form of loan for a sum of Rs. 4,89,00,000/- (Rupees Four Crores Eighty Nine Lacs Only) *vide* sanction letter dated 31st January, 2016. It is further submitted that the respondents were deceitfully induced in order to apply for the credit facilities offered by the petitioner through its misleading representation and warranties of the officials.

11. It is submitted on behalf of the respondents that they were induced to append their signatures on unfilled and incomplete documents without being explained the contents, intent and purpose of the same. It is further submitted that the perusal of the loan documents makes it evident that at

the time sanctioning of fresh facilities in the year 2020, the signatures of respondent no. 5 could not be traced, thereby establishing *mala fide* intention of the petitioner.

12. It is submitted on behalf of the respondent that the petitioner wrongly and illegally classified the loan facility of the respondents as a Non-Performing Assets (NPA) on 1st January, 2022 that was never communicated to the respondents.

13. It is submitted that despite making timely repayments, the respondents received a notice dated 18th February, 2022 alleging that an outstanding amount to the tune of Rs. 5,48,07,070.37 (Rupees Five Crores Forty Eight Lacs Seven Thousand Seventy and Thirty Seven Paise Only) is due and recoverable from the respondents and family members of the proprietors of the respondents. It is further submitted that the said notice was addressed to the deceased mother i.e. respondent no. 3 who expired on 11th January, 2019, is null and void in accordance with the settled position of law.

14. It is submitted on behalf of the respondents that the petitioner shrewdly mentioned incorrect description of the subject property in aforesaid notice. It is further submitted that the said notice incorrectly mentioned the description of subject property as 480 Sq. yds, new No. 348-A, out of Khewat No. 1, Khasra No. 1563/624 situated in the area of Chandwali alias Shahdara in Bhol Nath Nagar, R. S. Block, Delhi-110032. It is further submitted that only a portion of the said property was mortgaged by the mother of respondent in the alleged notice.

15. It is submitted on behalf of the respondents that despite numerous reminders, the petitioner miserably failed to provide copy of statement of

account with respect to the loan and illicitly calculated the overdue that was pending upon the respondents. It is further submitted that the rate of interest charged by the petitioner was excessive and usurious.

16. It has been submitted on behalf of the respondents that the present proceedings under Section 11 of the Act are not maintainable since the petitioner has indulged into serious commission of fraud and forgery thereby making a criminal case.

17. Heard learned counsel for the parties and perused the record.

18. This Court finds force in the arguments advanced on behalf of the petitioner and is inclined to allow the prayer made in the instant petition. This Court further finds that the arguments advanced on behalf of the respondents cannot come to her rescue since she has failed to establish the non-maintainability of the instant petition.

19. This Court, without adjudicating upon the merits of the case, is of the view that the dispute between the parties is arbitral in nature and therefore, finds it evident to appoint an independent sole arbitrator to adjudicate the disputes between the parties. Hence, the following order:

ORDER

- (i) Justice R. S. Chauhan, Former Chief Justice, Uttarakhand High Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Loan Agreements dated 30th January, 2016 and 26th February, 2016;
- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of

Section 12(1) of the Arbitration and Conciliation Act, 1996;

- (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open.

20. A copy of the same be supplied to the appointed arbitrator on address mentioned below:

Justice R. S. Chauhan, Former Chief Justice, Uttarakhand
High Court
D-31, II Floor,
Nizamuddin East, New Delhi-110013
Phone No. +917022891674
Email Id: office.jrsc@gmail.com

21. With the aforesaid directions, the instant petition is disposed of along with the pending applications, if any.

22. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 27, 2023

gs/ug

Click here to check corrigendum, if any

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