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

+ **ARB.P. 158/2024**

ADITYA BIRLA FINANCE LIMITED. Petitioner

Through: Mr. Aman Vasisth, Adv.

versus

BIJAYA DRUMS PRIVATE LIMITED AND ORS..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 09.05.2024

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') by the Petitioner- Aditya Birla Finance Limited seeking appointment of an Arbitrator. The Petitioner, which is a finance company, had executed a Deed of Guarantee, Facility Agreement and Line of Credit Agreement, all dated 29th June, 2019 with the Respondents - M/s. Bijaya Drums Pvt. Ltd., and its Directors.
3. According to the Petitioner, the Respondents had availed of substantial credits and have not repaid the same. It is the contention of the Petitioner that the total claim of outstanding amount is to the tune of more than Rs.6.50 crores.
4. The Petitioner notified the Respondents of their defaults and issued an Arbitration notice after classifying the Respondents account as Non-



Performing Account (NPA) on 16th March, 2021. Further, the Petitioner owing to the continued defaults of the Respondents, served upon them a Statutory Demand Notice dated 7th July, 2021 under Section 13(2), SARFAESI Act, 2002 for an outstanding amount of Rs 6,34,03,398.01/- along with the principal amount, interest and other charges due outstanding as on the said date. However, it is averred that despite the receipt of the Statutory Demand Notice, the Respondents failed to discharge their outstanding debt and did not regularize their loan accounts.

5. It is submitted by the Id. Counsel for the Petitioner that the properties which were mortgaged as described at pages 19 to 20 of the petition. Three properties were mortgaged details of which are as under:

“i) All that piece and parcel of Residential property situated at Udayrajpur, Madhyamgram, Dag No. 240, Khatian No. 484, J.L. No. 43, Mouza-Udayrajpur P.S. Barasat, under Madhyamgram Municipality, Ward No.9, Kolkata-700129.

ii) ALL THAT piece and parcel of the Residential Property being flat/covered space being Unit No. 201, on the Northern side of the Second Floor of "Block E" of the New Buildings, having a total Super Built Area of 1666 Square Feet, more or less, delineated on the Map annexed hereto, marked "B" and bordered "GREEN" thereon and

(Part- II) (The Parking Space) ALL THAT parking space being No. RG - 16, for parking of 1 (one) medium sized motor car in the Ground Floor of the New Buildings, delineated on the Map annexed hereto, marked "C" and bordered "GREEN" thereon lying and situated at ALL THAT piece and parcel of land having an area measuring 136.25 Decimal equivalent 82(Eighty Two) Cottahs 6 (Six) Chittacks and 41 (forty One) Square Feet, more or less out of which 94.25 Decimal of land contained in Mouza Atghora, L.R.



Dag No. 408 (P), 409 (P) 411,413,414,415,416, 417(P) and 418, comprised in L.R. Khatian No. 932 and 645, J.L. No. 10, R.S. No. 133, Touzi No. 172, AND 42.00 Decimal of land contained in Mouza Dasadrone, L.R. 437/1, J.L. No.4, R.S. No 150, Touzi No. 2998, all within the limit of Rajarhat Gopalpur Municipality, Police Station Rajarhat, District North 24 Parganas, under Additional District Sub - Registrar Office at Bidhannagar, Salt Lake City.

iii) ALL THAT the Semi- Commercial open space measuring about 1189 square feet super built up area on the Ground Floor of the building at the said premises hereinabove together with undivided proportionate share in the land directly underneath of the building which is lying and situated at ALL THAT the piece and parcel of land measuring 20 cottah 12 chittak and 18 sq. ft. be the same a little more or less appertaining to R.S. Dag No. 434 under R.S. Khatian no. 217, corresponding to L.R. Dag No. 1419 Present L.R. Khatian No. 2010 Of Mouza- Chandnagar, J.L. no. 44, R.S. No. 167, Touzi No. 146, Pargana- Anwarpur, P.S. and A.D.S.R.O. Barasat, District- North 24 Parganas within the local limit of Madhyamgram Municipality bearing Holding No. 181/1 (Sodepur Road- East).”

6. As per the Petitioner, Property No.(ii) and (iii) have been auctioned and the sum realized is to the tune of approximately Rs.86 lakhs and 75 lakhs respectively. However, it is the case of the Petitioner that despite the said realization, outstanding dues of more than Rs. 6 crores remain.

7. The Court has heard Id. Counsel for the Petitioner. The Petitioner had issued an arbitration notice on 17th November, 2022. The deed of guarantee was also executed by five guarantors, namely, Ms. Chandrani Chakraborty, Mr. Rudra Shankha Chakraborty, Mr. Milan Chakraborty, Ms. Shanti



Chakraborty and Ms. Dipta Shankha Chakraborty. However, insofar as Ms. Chandrani Chakraborty is concerned, it is submitted that she is in insolvency and therefore, she has not been impleaded in the present proceeding. Ld. Counsel submits that Respondents have not appeared and therefore let the Arbitrator be appointed. He further submits that in terms of the deed of guarantee, the venue of arbitration is Delhi.

8. The arbitration clause mentioned in Clause 25, Clause 25.17 and Clause 32.17 of the respective loan agreements containing venue of Arbitration as Delhi which is set out below:

*“25. Clause 25 of the Deed of Guarantee dated 29.06.2019, Clause 25.17 of the Line of Credit Facility Agreement dated 29.06.2019 and Clause 32.17 of the Facility Agreement dated 29.06.2019 it was agreed out of free will and consent of the Respondents and the Petitioners respectively that all the disputes or claims missing out of the above said Agreements shall be settled by arbitration. **It was further mutually agreed that the arbitral tribunal shall consist of a sole arbitrator to be appointed by the petitioner and the place of arbitration shall be Delhi.** In lieu of the same, the petitioner was appointing arbitrator to adjudicate the present dispute.*

xxx xxxx xxx xxx
25.17 All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to



exercise all powers under the Arbitration and Conciliation Act, 1996 .. .

xxx xxx xxx xxx

"32.17 All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi, Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996 ... "

9. This along with the schedule would show that the venue of arbitration is in Delhi. The Respondents have not appeared despite service, as was recorded in the previous order dated 15th March, 2024.
10. In view thereof, **Justice Sanjib Banerjee (Retd.) (M: 9830073380)** is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
11. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.
12. List before the DIAC on 28th May, 2024.
13. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.



14. Petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

MAY 9, 2024/Rahul/am