



2024-DRC-2547



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 09th April, 2024**

+ **ARB.P. 242/2024**

ADITYA BIRLA FINANCE LIMITED Petitioner

Through: Mr. Nishant Srivastava, Advocate.

versus

D K INDUSTRIES AND ORS. Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of an Arbitrator for adjudication of the disputes having arisen between the parties.
2. It is submitted in the petition that in the month of December, 2021, the respondent No. 1 through its Proprietor/respondent No. 2 approached the petitioner for availing the financial facilities.
3. The petitioner *vide* Sanction Letter dated 31.12.2021 and Facility Agreement dated 31.12.2021 sanctioned the financial facilities in the nature of line of credit for an amount of Rs. 2,16,00,000/- and Rs. 1,20,00,000/- to the respondents.
4. It is submitted that for securing the due repayment of the financial facilities granted to the respondents, a Deed of Guarantee dated 31.12.2021



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and a Memorandum of Entry (Equitable Mortgagee of Property by deposit of Title Deeds) dated 31.12.2021 were executed by the respondent Nos. 2 and 5 in favour for the petitioner.

5. In terms of the financial facilities, the respondents were required to repay the principal amount of loan in accordance with the repayment schedule but the respondents defaulted in repaying the principal and interest amount along with charges in respect of the financial facilities granted to them. Thus, the account of the respondents was classified as Non-Performing Asset (NPA) on 13.06.2023 in the books of the petitioner as per the provisions and guidelines issued by the Reserve Bank of India.

6. It is asserted that the petitioner *vide* Letter dated 27.06.2023 called upon the respondent Nos. 1 to 4 to furnish the details of the legal heirs of the deceased Guarantor/Mortgagor i.e., Mr. Dalip Kumar Mandal and the same has been duly served upon the respondents.

7. The petitioner through its Authorised Officer issued a Statutory Demand Notice dated 11.07.2023 to the respondents under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “SARFAESI Act, 2002”) calling upon them to make payment for a sum of Rs. 4,88,44,344/- due as on 19.06.2023 along with further interest and other charges thereon. The Statutory Demand Notice dated 11.07.2023 was also published in the Newspaper in English, the ‘Pioneer’, Chandigarh on 28.07.2023 and in Punjabi in ‘Charhdikala Patiala’ on 28.07.2023.

8. The respondent No. 1 *vide* its undated Objection Letter raised objections under Section 13(3) of SARFAESI Act, 2002 before the Authorised Officer of the petitioner against the Statutory Demand Notice



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dated 11.07.2023 which was duly adjudicated upon by the Authorised Officer of the petitioner under Section 13(3A) of SARFAESI Act, 2002 *vide* Reply Letter dated 08.09.2023.

9. It is submitted that the respondents failed to make payment even after the expiry of 60 days of the Demand Notices under Section 13(2) of SARFAESI Act, 2002, the Authorised Officer of the petitioner initiated action against the respondents under Section 13(4) of SARFAESI Act, 2002 and proceeded to take possession of the mortgaged property on 05.10.2023. The Possession Notice was also published in the in English, the 'Pioneer', Chandigarh on 07.10.2023 and in Punjabi in 'Charhdikala Patiala' on 07.10.2023.

10. The petitioner issued the Notice for Invocation of Arbitration dated 18.11.2023 to the respondents in accordance with Clause 25 of the two Deed of Guarantee dated 31.12.2021, Clause 32.17 of two Facility Agreements dated 31.12.2021 and Clause 25.17 of Facility Agreement dated 31.12.2021.

11. It is submitted that due to *bona fide* inadvertence, the clause numbers of the Arbitration Clause were incorrectly mentioned in the Notice to Arbitrate dated 18.11.2023.

12. The petitioner once again issued a Statutory Notice to Arbitrate dated 13.01.2024 which was received by the respondents on 15.01.2024. However, the respondents have failed to reply to the said Notice till date. Hence, the present petition has been filed seeking appointment of an Arbitrator.

13. Present none on behalf of the respondents.

14. The perusal of the Office Noting shows that the respondents have been served through E-mail, but none is present.

15. No formal Reply has also been filed on behalf of the respondents.



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16. **Submissions heard.**

17. Clause 25 of the two Deed of Guarantee dated 31.12.2021, Clause 32.17 of two Facility Agreements dated 31.12.2021 and Clause 25.17 of Facility Agreement dated 31.12.2021 provide for resolution of disputes through arbitration.

18. In view of the submissions made and the petitioner has raised the arbitrable disputes and there is a valid Arbitration Clause between the parties, the present petition is allowed, Mr. Justice G.P. Mittal, Judge (Retd.), Delhi High Court, Mobile No. 9910384610, is hereby appointed as the sole Arbitrator to adjudicate the disputes between the parties.

19. The parties are at liberty to raise their respective objections before the Arbitrator.

20. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.

21. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

22. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

23. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 09, 2024
S.Sharma