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

+ ARB.P. 461/2024

INDIABULLS HOUSING FINANCE LTD

.....Petitioner

Through: Mr. Raghav Khanna, Mr.
Siddharth Nayak & Mr. Ilam
Parithi D.K., Advocates [M:-
9953557026]

versus

BHAGEERATHI SREEDEVI

.....Respondent

Through: Mr. Sahil Ghai, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.08.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a loan agreement dated 28.09.2018 ["the Agreement"], whereby a loan was disbursed by the petitioner to the respondent for purchase of a residential property. According to the petitioner, an amount of approximately Rs. 76 lakhs was disbursed to the respondent, but the respondent has failed to repay the entire amount, and a balance amount of approximately Rs. 10 lakhs remains due.

2. The petitioner issued a demand notice dated 22.11.2023 for recovery of the balance amount. Thereafter, relying upon an arbitration clause [Article 12] contained in the Agreement, the petitioner appointed an arbitrator to adjudicate the disputes, on 23.12.2023. However, by an



order dated 25.01.2024, the sole arbitrator terminated the arbitral proceedings on the ground that his appointment was unilateral, and therefore impermissible.

3. The petitioner therefore addressed a notice dated 02.02.2024 to the respondent, invoking the arbitration clause afresh. The respondent replied on 17.02.2024, followed by other similar correspondence, in which the existence of the arbitration clause was not denied. It was stated that the respondent suffered financial issues and certain health problems during the COVID-19 pandemic, and that she stopped servicing the loan under the advice of the petitioner's representative.

4. As the parties were unable to achieve consensus on the appointment of an arbitrator, the case has been brought before this Court.

5. Mr. Sahil Ghai, learned counsel, enters appearance on behalf of the respondent, pursuant to notice issued on 08.04.2024. He submits that the disputes between the parties are not arbitrable, as the respondent falls within the definition of a "consumer" under the Consumer Protection Act, 2019 ["CPA"]. In fact, the petitioner has filed proceedings under CPA on 05.08.2024. Notice has not yet been issued in the said proceedings.

6. Mr. Ghai submits that, in terms of the judgment of the Supreme Court in *M. Hemalatha Devi v. B. Udayasri* [(2024) 4 SCC 255] and the judgments referred to therein, notwithstanding the existence of an arbitration clause in an agreement, the CPA being a beneficial legislation, a "consumer" has the right to elect whether or not the disputes between the parties be referred to arbitration.

7. In view of the judgment of the Supreme Court in *Interplay Between*



Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [(2024) 6 SCC 1], as explained in SBI General Insurance Co. Ltd. v. Krish Spinning [2024 SCC OnLine SC 1754], however, Mr. Ghai submits that the matter may be referred to arbitration, leaving it open to the learned arbitrator to determine the question of arbitrability.

8. The judgment in *SBI General Insurance Co. Ltd. [Supra]* revisits the question of scope of jurisdiction under Section 11 of the Act, in light of the judgment in *Interplay [Supra]*, and holds that the only question to be determined by the referral Court at the stage of Section 11 proceedings, is with regard to *prima facie* existence of an arbitration agreement. All questions of arbitrability are to be left open for determination by the arbitral tribunal, in consonance with the principle of *Kompetenz-Kompetenz*. I am therefore of the view that Mr. Ghai's submission deserves to be accepted.

9. For the aforesaid reasons, the petition is disposed of by appointing Mr. Ashish Dholakia, Senior Advocate [Tel: 9811157597] as the arbitrator to adjudicate the claims and counterclaims, if any, raised before the learned arbitrator under the Agreement dated 28.09.2018. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned arbitrator.

10. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. All rights and contentions of the parties, including on arbitrability,



are reserved. It is also made clear that this order is not intended to prejudice the rights and contentions of the parties in the proceedings under the CPA.

12. The petition stands disposed of in these terms.

PRATEEK JALAN, J

AUGUST 7, 2024

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