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

% ***Date of Decision: 06.11.2024***

\+ **ARB.P. 462/2024**

INDIABULLS HOUSING FINANCE LTD. .....Petitioner
Through: Mr. Vibhu Tripathi and Mr. Raghav Dhingra, Advs.

versus

LAKSHMI ARYA AND ANR .....Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL.)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeking appointment of a Sole arbitrator for adjudicating the disputes between the parties.

2. Disputes between the parties have arisen under a Loan Agreement dated 28.01.2017 (hereinafter *"the Loan Agreement"*) between the Petitioner and Respondent No.1/Ms. Lakshmi Arya and Respondent No.2/ Ms. Urmila Devi Arya against the mortgage of Property/ies being *"Upper Ground Floor Without Roof/Terrace Rights Towards Back Side of Plot No-RZ-TA-58, Khasra No. 18/5, Village Matiala Extension, Block-C, Known as TA-Block, Uttam Nagar, Delhi-110059"*.

3. Pursuant to the aforesaid Loan Agreement, the Petitioner remitted the sanctioned Loan Amount of Rs. 25,63,088/- to the Respondents. The loan was to be repaid in 240 Equated Monthly Installments (EMI).

4. Upon the default committed by the respondents in paying the EMIs, for a period of more than 90 days, the account of the respondents was classified as Non-Performing Asset (NPA) on 28.08.2019. A Notice dated 30.08.2019 was issued to the respondents u/s 13(2) of the SARFAESI Act, 2002, for recovery of the outstanding loan amount of Rs. 25,36,521/-, however, no reply was received from and the amounts still remained unpaid by the respondents.

5. Consequently, the petitioner enforced the security interest and realised Rs. 20,50,000/- by auctioning the mortgaged property of the respondents vide Sale Certificate dated 20.01.2022. However, despite the aforesaid recovery through the enforcement of the security interest, the respondents still remained in default of the balance loan amount to the tune of Rs. 7,96,385/-, along with the interest.

6. In lieu of the unrealised outstanding loan amount, the petitioner issued a Demand Notice dated 16.01.2024 to the respondents.

7. Subsequently, due to the non-payment of the said outstanding loan amount, the petitioner invoked the arbitration clause incorporated in the Loan Agreement.

8. The relevant arbitration clause in the Loan Agreement dated 28.01.2017 between the parties is as under :-

> *"ARTICLE 14: ARBITRATION*
> *This Loan Documents is/shall be governed by Indian laws and courts at New Delhi shall have exclusive jurisdiction relating to any matter/ issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary, if any dispute/ disagreement/ differences ("Dispute") arise between the Parties (including any Borrower(s)) during the subsistence of the Loan Documents and/ or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/ or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any*

nature whatsoever, then, <u>the Dispute shall be referred to a sole arbitrator who shall be appointed by IHFL only</u>. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means of securing the appointment/ nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. <u>The place of arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by Arbitration & Conciliation Act, 1996</u> (or any statutory re- enactment thereof, for the time being in force) and shall be in English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law."

9. In the present proceedings, notice was issued by the Court on 08.04.2024. Notice was sent to the respondent no.1 through speed post and approved courier both at her residential address, as mentioned in the loan application form, and her last known office address. As per the tracking reports available on record, the speed post sent to her residential address was endorsed with the remarks "*Item Redirected to Civil Lines SO North Delhi Insufficient Address*", and the speed post sent to her last known office address returned with the remarks *"Item Returned Addressee Left without instructions"*. However, the approved courier sent to her last known office address was successfully delivered on 27.07.2024. Additionally, the Respondent no.1 was duly served with notice *via* email on her Email ID- *<u>lakshmia@bioworldind.com</u>,* as mentioned by her in the loan application form, as well as on her Whatsapp number on 17.05.2024. Notice was issued to respondent no.2 through speed post and approved courier. As per the tracking reports available on record, the speed post remained unserved and was endorsed with the remark *"Item Returned No such person in the address",* and the approved courier returned with the remarks *"The status for DEL203585591 is on transit and the latest updated status is Despatched*

to DELHI". In this regard, an affidavit of service has been filed by the petitioner on 03.08.2024 *vide* Diary No. 2762687/2024.

10. The notice was also issued by publication in the National daily newspapers, in compliance with the directions given in the order dated 06.09.2024. In this regard, an affidavit of service has been filed by the petitioner on 28.10.2024 *vide* Diary No. 28361/2024.

11. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service upon respondents not only at the last known address/es but also at the other addresses of the respondents and has thereby discharged its onus to effect service on the respondents.

12. The scope of the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties. In this regard, it has been held by the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, Curative Petition (C) No. 44/2023 decided on 14.12.2023, as under :-

> *"208. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:*
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> *"(iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.*
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> *(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues."*

*209. **<u>The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.</u>**"*

13. Furthermore, in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532, the Supreme Court has observed as under:

> *"113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement <u>and not any other issues</u>. The relevant observations are extracted hereinbelow:*
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>> *"209. The above extract indicates that the **<u>Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings</u>**. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. […]"*
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>> *(Emphasis supplied)*
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> *114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).*

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if it Section 11 application is rejected."

14. In the present case, on a bare perusal of the Article 14 of the Loan Agreement, as placed on record, it is *prima facie* evident that a valid Arbitration Agreement exists between the parties, which was duly invoked by the petitioner vide Notice dated 07.02.2024.

15. In the circumstances, there is no impediment to appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd***., (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***. (2017) 8 SCC 377, ***Bharat Broadband Network Limited v. United Telecoms Limited*** 2019 SCC OnLine SC 547 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666.

16. Accordingly, Mr. Dhruv Pande, Advocate (Mob. No.: +91 9910165010) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

17. The respondent shall be at liberty to raise preliminary objections regarding jurisdiction and/or arbitrability, if any, which shall be decided by the sole arbitrator, in accordance with law.

18. The learned Sole Arbitrator may proceed with the arbitration

proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

19. It is clarified that this Court has not expressed any opinion on the merits of the respective contentions of the parties, or the merits of the matter.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 6, 2024/*at, ts*