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

+ **ARB.P. 464/2024**

INDIABULLS HOUSING FINANCE LTD

.....Petitioner

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

versus

RAJENDRA SINGH CHAUDHARY AND ORSRespondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.08.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under a loan agreement dated 30.06.2017 [“the Agreement”], whereby the petitioner advanced a loan of Rs. 18,42,290/- to the respondents on the terms and conditions contained therein.
2. The Agreement contains an arbitration clause [Article 12], which provides for resolution of disputes by a sole arbitrator appointed by the petitioner. New Delhi has been designated as the place of arbitration and Courts in New Delhi have also been vested with exclusive jurisdiction under the said clause.



3. Disputes having arisen between the parties, the petitioner purportedly exercised its right under the Agreement to appoint an arbitrator on 02.01.2024. However, the learned arbitrator terminated the proceedings on 25.01.2024, on the ground that he had been appointed unilaterally.

4. The petitioner thereafter invoked arbitration afresh by a communication dated 02.02.2024, which elicited a response from respondent No. 1 on 25.02.2024.

5. As the parties were unable to agree upon the reference, the petitioner has approached this Court under Section 11 of the Act.

6. Notice was issued on 08.04.2024, but the respondents have not entered appearance. Mr. Raghav Khanna, learned counsel for the petitioner, states that he has instructions to proceed only against respondent No. 1 in these proceedings.

7. As far as respondent No. 1 is concerned, learned counsel for the petitioner has filed an affidavit of service dated 03.08.2024, which *inter alia* states that notice was served at the respondent No. 1's email address – *rajenderrajsingh@gmail.com*, and has not bounced back. The email was sent on 25.07.2024. This is the same email address from which respondent No. 1 has addressed the aforesaid email dated 25.02.2024 to the petitioner. The respondent No. 1 has not entered appearance despite the said service.

8. At the stage of proceedings under Section 11 of the Act, the Court is only required to examine the *prima facie* existence of an arbitration agreement, in terms of the judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754].



9. Having regard to this position, and the fact that respondent No. 1 has not appeared to contest the existence of the arbitration agreement, the petition is allowed with the following directions:

- A. The disputes between the petitioner and respondent No. 1, under the Agreement dated 30.06.2017, are referred to arbitration to be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an Arbitrator from its panel.
- B. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- C. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned arbitrator.
- D. All rights and contentions of the parties, including on maintainability and merits of the claims, are left open for adjudication by the learned arbitrator.
- E. As respondent No. 1 has not entered appearance in these proceedings, it is made clear that he must be properly served in the arbitration proceedings, in accordance with the Rules of DIAC.

PRATEEK JALAN, J

AUGUST 7, 2024

‘Bhupi’/