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

+ **ARB.P. 536/2024**

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr. Nachiketa Suri, Mr. Raj
Kumar, Mr. Kumar Sambhav
Verma, Mr. Ridit Mahajan, Mr.
Mallika Alhuwalia, Advocates.

versus

PHATEH SINGH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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02.08.2024

1. The petitioner has approached this Court 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 27.11.2018.
2. By way of the said agreement, the petitioner advanced a loan of Rs.7,88,376/- to the respondent. The loan agreement includes an arbitration clause (Clause 19.1), which provides for disputes to be resolved by arbitration held in Mumbai/Delhi/Kolkata/Chennai, as may be decided by the petitioner. It also vests authority in the petitioner to appoint the arbitrator.
3. Disputes arose between the parties as the respondent was allegedly



in default of repayment of the loan. The petitioner invoked the arbitration clause on 01.03.2024, and appointed an arbitrator. However, having regard to the impermissibility of unilateral appointment of an arbitrator, the petitioner withdrew its claims, and the matter was disposed of as withdrawn, with liberty to file afresh, as recorded in the order of the arbitrator dated 05.04.2024.

4. The petitioner has, therefore, approached this Court for appointment of an independent arbitrator to adjudicate the disputes between the parties.

5. Notice was issued in this petition on 08.05.2024. The Registry reports that service has been effected upon the respondent by e-mail. Mr. Nachiketa Suri, learned counsel for the petitioner, states that the e-mail address of the respondent mentioned in the memo of parties is validated by the application form submitted by the respondent, pursuant to which the agreement was entered into. He has handed over a copy of the application form in Court, which is taken on record. The application contains the same e-mail address. Additionally, Mr. Suri has also filed an affidavit of service, which shows that notice has been delivered to the respondent at one of the addresses mentioned in the memo of parties, as also by e-mail. A perusal of the record shows that the e-mail notice was sent by the Registry on 28.05.2024, and the speed post was delivered on 08.06.2024. Service is thus taken to be complete. The respondent has nonetheless chosen not to appear.

6. At the stage of proceedings under Section 11 of the Act, the Court is only required to determine *prima facie* whether an arbitration agreement exists or not. All other questions are left open for adjudication



by the arbitrator.

7. Having regard to the agreement placed on record, I am *prima facie* satisfied with regard to the existence of the arbitration agreement.

8. The petition is, therefore, allowed and the disputes between the parties are referred to arbitration 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. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

10. All rights and contentions of the parties, including on maintainability and merits of the claims, are left open for adjudication by the learned Arbitrator.

11. As the respondent is not represented today, it is made clear that the respondent must be served in the arbitration proceedings in accordance with the DIAC Rules.

PRATEEK JALAN, J

AUGUST 2, 2024

‘Bhupi’