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

+ **ARB.P. 648/2023**

**MONEYWISE FINANCIAL SERVICES PVT. LTD. .... Petitioner**

Through: **Ms. Mehvish Khan, Adv. (VC)**

versus

**DREAM PANELS PRIVATE LIMITED AND ORS. .... Respondents**

Through: **Mr. Deepak Kr. Agarwal, Mr. Akash Gupta, Advs. for R-3**

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**16.01.2024**

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1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the Master Loan Agreement dated 19.06.2020 was executed between the petitioner and Dream Panels Private Limited. Learned counsel for the petitioner submits that respondent No.2 (deceased) husband of defendant No.3- (Co-borrowers) were the proprietors of Dream Panels Private Limited.
3. It has further submitted that the said Agreement contains an arbitration clause, which provides that all disputes, with respect to the said agreement, shall be referred to arbitration as per provisions of the A&C Act, and further provides that the place of arbitration would be at Delhi. The Arbitration clause (clause- 60) which reads as under;



*10.1 Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties, or termination ("Dispute"), shall be referred to a sole arbitrator duly appointed by the Lender. The language of the arbitration shall be English. The seat of the arbitration shall be at New Delhi and the language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator's decision. The costs and expenses of the arbitration shall be borne equally by each Party, with each Party paying for its own fees and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall be final and binding.*

4. Disputes having arisen between the parties, the petitioner invoked arbitration vide legal notice dated 20.04.2023.
5. Learned counsel for respondent No.3 submits that he has filed the reply. However, the same is not on the record.
6. Let it be brought on the record.
7. Learned counsel for respondent No.3 submits that the present petition is liable to be dismissed outrightly that respondent No.2 had died even before filing the petition and the petition against the dead person is not maintainable. Learned counsel for the respondent has further submitted that in fact, the matrimonial relation between the respondent No.2 and 3 were not cordial and in fact defendant No.2 deceased husband had himself put the signature of the defendant No.3 on the agreement. Learned counsel submits that therefore, the



agreement itself is invalid.

8. It has further been submitted that the loan was covered by the insurance. The petitioner could have recovered the loan from the insurance company.
9. However, it is not disputed that there is an arbitration clause and there is an arbitral disputes with the seat at New Delhi. The invocation of the arbitration has also not been disputed. The jurisdiction of the Court while deciding a petition under Section 11 is very limited. The Court is only required to see whether an arbitration agreement exists and an arbitral dispute has arisen between the parties.
10. The plea that respondent No.3 had not signed the said agreement 19.06.2020 and it is a forged document that can only be agitated before the learned Arbitrator and decided by the learned Arbitrator. The contention is that in the absence of the signature, there is no privity of contract between the petitioner and respondent No.3, can also be determined by the learned Arbitrator on the basis of the evidence on the record. However, as far as respondent No.2 is concerned, he has already expired and cannot be referred to the arbitration.
11. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
  - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
  - ii) As agreed by both the counsels for the parties, Mr. Anil Kaushik, Advocate, (Mobile No. 9810414419) is



appointed as Sole Arbitrator to adjudicate the disputes between the parties.

- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

6. The petition is disposed of in the above terms.

**DINESH KUMAR SHARMA, J**

**JANUARY 16, 2024**

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