



2024:DHC:10142



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

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Date of Decision: 09.12.2024+ **ARB.P. 602/2024**

INDIABULLS HOUSING FINANCE LTD.

.....Petitioner

Through: Mr. Raghav Khanna, Advocate.

versus

DEEPAK AND ANR.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The petitioner has filed an amended memo of parties to bring on record the change in its company name. The same is taken on record.
2. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*'), seeking constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Loan Agreement dated 27.12.2017 (hereinafter "*the loan agreement*") entered into between the petitioner and the respondents.
3. The said Agreement contains an arbitration clause which reads as under:-

"ARTICLE 14: ARBITRATION

The Loan Document is/shall be governed by Indian laws and the 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, it 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, the Dispute shall be referred to a sole arbitration who shall be appointed by IHFL only. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitration, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the 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. ”

4. Disputes have arisen between the parties in view of the respondents’ alleged default in making the requisite payment in terms of the loan agreement. It is stated that in view of the defaults on the part of the respondents, the loan facility was recalled and the loan account of the respondents was classified as non-performing asset (NPA) on 07.12.2021 and a notice under Section 13(2) of the SARFAESI ACT, 2002 was issued by the petitioner to the respondents on 09.12.2021.

5. Subsequently, the mortgaged property was auctioned and certain amount/s was realised by the petitioner. However, upon adjusting the amount recovered by way of auctioning the mortgaged property against the outstanding amount under the loan agreement payable to the petitioner, some further amount remained unpaid on account of ‘loss on sale’ by the respondents. It is for recovery of this amount that the present arbitral



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proceedings have been sought to be initiated.

6. Initially, the petitioner sought to unilaterally appoint an arbitrator. However, the said arbitral proceedings, were *non-est* in view of the legal position enunciated in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited.***, 2019 SCC OnLine SC 547 and were therefore terminated on 25.01.2024. Consequently, the petitioner issued a fresh invocation notice on 02.02.2024, seeking constitution of arbitral tribunal to adjudicate the disputes between the parties, however, the parties could not mutually agree upon constitution of an arbitral tribunal; hence the present petition has been filed.

7. None appears for the respondents.

8. *Vide* order dated 29.07.2024, it was noticed that the petitioner has filed an affidavit of service which states that notice has been served on the respondents through email. The courier tracking report also states that the notice was delivered at the address mentioned in the memo of parties. However, since the speed post tracking report did not reflect service of the notice, liberty was granted to the petitioner to make an application for effecting service by publication. Consequently, the said application came to be filed by the petitioner.

9. It is submitted by the petitioner that the requisite publication has already been made and the affidavit of service dated 22.11.2024 has already been filed in this regard. The said affidavit records that the required notice



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was duly published in the national daily newspapers i.e. Times of India and Dainik Bhaskar (Jaipur Edition) on 20.11.2024.

10. In the aforesaid circumstances, the present petition has been taken up for hearing despite non-appearance of the respondent.

11. Since the existence of the arbitration agreement is evident from a perusal of the Clause 14 of the loan agreement, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties, as mandated in terms of law laid down by the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532.

12. Further, in terms of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC*** (supra), ***TRF Limited v. Energo Engineering Projects Ltd***, (supra), ***Bharat Broadband Network Limited v. United Telecoms Limited.***, (supra), it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

13. Accordingly, Mr. Shubham Ranakoti, Advocate (Mob. No.: +91 9667592790) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The respondents shall be entitled to take appropriate objections as regards jurisdiction/arbitrability, if any, before the learned Sole Arbitrator, which shall be decided by the learned Sole Arbitrator on merits and in accordance with law.



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15. The respondents shall raise counter-claims, which shall be dealt with and adjudicated by the learned Sole Arbitrator, in accordance with law.
16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.
17. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
18. Needless to say, nothing in this order shall be construed as an expression of the opinion of this Court on the merits of the case.
19. The present petition stands disposed of in the above terms.

DECEMBER 9, 2024/at

SACHIN DATTA, J