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

+ **ARB.P. 801/2022 and I.A. 10836/2022**

OVINGTON FINANCE PVT. LTD.

..... Petitioner

Through: Mr. Aniket Rajput and Ms. Priyanka,
Advocates.

versus

NEERAJ KUMAR JHA

..... Respondent

Through: Mr. Chandan, Ms. Punam Mishra and
Ms. Shifali, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

06.03.2024

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By way of the present petition under section 11(5) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen between the parties from Loan Agreement dated 20.09.2018 ('Loan Agreement').

2. Mr. Aniket Rajput, learned counsel for the petitioner has drawn the attention of this court to Article 12 of the Loan Agreement, which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to a Sole Arbitrator to be appointed by the petitioner/Ovington Finance Pvt Ltd; with the arbitral proceedings to be conducted at New Delhi.
3. For completeness, it may be recorded that no separate territorial jurisdiction clause is contained in the Loan Agreement.



4. As per the record, the petitioner invoked arbitration *vide* Notice dated 25.02.2022; to which no reply was sent by the respondent.
5. Notice on this petition was issued on 18.07.2022; consequent to which, the respondent has filed its reply dated 15.07.2023 to the petition.
6. No substantial argument has been made by Mr. Chandan, learned counsel appearing for the respondent, except to say that they wish to settle the matter, which submission however appears to be belied by their conduct.
7. In reply dated 15.07.2023 filed to the petition, the respondent has made generalised and vague denials of the allegations contained in the petition. However there is no denial as to the existence or validity of the arbitration agreement between the parties; nor to the fact that money was indeed loaned by the petitioner to the respondent. In fact in the reply, the respondent states that he “ *is ready and willing to pay the unpaid instalments/lawful due amount to the petitioner and the respondent is not liable to pay any other wrong, illegal and exorbitant penalties and charges as made up by the petitioner.*” The respondent has further said that he “ *undertakes to pay the future instalments regularly as per the schedule of payment, if the petitioner regularize the account of the respondent.*” The respondent has also expressed his willingness to settle his loan account; but, as the order-sheet in the matter shows, despite assurances extended even to court, the respondent has not honoured those representations.
8. The arbitration agreement between the parties contemplates appointment of a sole arbitrator unilaterally by the petitioner. Be that



as it may, there is no cavil with the proposition that in view of the judgement of the Supreme Court in *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd*¹, an arbitrator cannot be unilaterally appointed by any of the disputing parties.

9. Upon a conspectus of the averments contained in the petition and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties as set-out *inter-alia* in invocation notice dated 25.02.2022 do not appear *ex-facie* to be non-arbitrable.
10. Accordingly, the present petition is allowed and **Ms. Aradhya Chaturvedi, Advocate (Cellphone No. +91 9560758007)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
11. The learned Arbitrator may proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
12. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
13. Parties shall share the arbitrator's fee and arbitral costs, equally.

¹ (2020) 20 SCC 760



14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
15. Parties are directed to approach the learned Arbitrator appointed within 15 days.
16. A copy of this order be communicated by the Registry to the learned Sole Arbitrator.
17. The petition stands disposed of in the above terms.
18. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

MARCH 6, 2024/ak