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

+ **ARB.P. 744/2024**

INDIABULLS HOUSING FINANCE LTD.Petitioner

Through: Mr. Raghav Khanna, Mr. Siddharth Nayak, Mr. Vibhu Tripathi, Mr. Sagar Devgan, Advocates.

versus

PRAMOD KUMAR MISHRA & ANR.Respondents

Through: Mr. Arun Kumar Maji, Mr. Harsh Kumar Gautam, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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12.09.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Loan Agreement dated 11.08.2016 [“the Agreement”].

2. The Agreement contains an arbitration clause (Article 12), which provides for arbitration by a sole arbitrator to be appointed by the petitioner. New Delhi has been designated as the place of the arbitration. Under Article 11, Courts in New Delhi have also been vested with exclusive jurisdiction.

3. Disputes having arisen between the parties, the petitioner has taken measures under the Securitization and Reconstruction of Financial Assets



and Enforcement of Security Interest Act, 2002 [“SARFAESI Act”]. It also appointed an arbitrator unilaterally, purporting to exercise its power under the arbitration clause. However, the learned arbitrator, by a communication dated 25.01.2024, has terminated the proceedings, holding that unilateral appointment of the arbitrator is not permissible in view of the judgment of the Supreme Court in *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760]. The petitioner therefore invoked arbitration afresh by communication dated 02.02.2024, to which it did not receive a reply.

4. Notice was issued in this petition on 24.05.2024. Pursuant to the order dated 22.08.2024, learned counsel for the petitioner has filed an affidavit dated 04.09.2024, in which it is stated that they received an undated communication from the respondents on 20.08.2024, which shows that the notice had been received by them.

5. Mr. Arun Kumar Maji, learned counsel, appears on behalf of the respondents today and submits that the existence of the arbitration clause is undisputed and that the petitioner has, in fact, recovered a significant amount by the sale of secured assets under the SARFAESI Act. He submits that the respondents would like to settle the remaining disputes in mediation. This suggestion is also acceptable to learned counsel for the petitioner.

6. Having regard to the above, and with the consent of learned counsel for the parties, the petition is disposed of with the following directions:

a. The parties are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road,



New Delhi-110503. They will appear before the learned Mediator on 19.09.2024.

b. In the event the mediation proceedings are unsuccessful, the disputes between the parties will be adjudicated by 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.

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

d. DIAC is requested to defer the proceedings for a period of eight weeks from today, to enable the parties to resolve their disputes. The learned Arbitrator is requested to enter into reference after a period of eight weeks, upon request of either party.

7. All rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

8. The petition stands disposed of with these directions.

PRATEEK JALAN, J

SEPTEMBER 12, 2024

‘Bhupi’/