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

+ **ARB.P. 763/2024**

M/S. INDIABULLS HOUSING FINANCE LTD.Petitioner

**Through: Mr. Raghav Khanna, Mr. Siddharth
Nayar, Mr. Vibhu Tripathi, Advs.**

versus

MR. T NARAYANA SWAMY AND ANR.Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.08.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties arising out of the Loan Agreement dated 27.11.2020.

2. The arbitration clause is Article 23 of the Loan Agreement and reads as under:-

“ARTICLE 23: ARBITRATION

The Loan Documents 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, if 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 arbitrator 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 arbitrator, 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 & 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.”

3. Since there were disputes between the parties, the petitioner invoked arbitration *vide* Legal Notice dated 27.03.2024.
4. The petitioner also initiated proceedings under SARFAESI Act, 2002 with regard to the secured asset and the same has been sold for a sum of Rs. 20,10,000/-.
5. The issue that whether in view of SARFAESI proceedings the present petition will lie or not (***M/s Diamond Entertainment Technologies Pvt. Ltd & Ors.. vs. Religare Finvest Ltd., 2023/DHC/000156 and M/s Fermina Developers Private Limited vs. Indiabulls Housing Finance Limited,***



2022/DHC/005642) need not detain me as the proceedings under SARFAESI Act has already been concluded and the asset has been sold. After conclusion of the said proceedings, there are still amounts due and payable by the respondent to the petitioner which are being sought to be recovered through these arbitration proceedings. In this view of the matter, the present petition is maintainable.

6. As per the loan application form, the e-mail ID of the respondent is shown as 'narayana.reddy@gmail.com'. The affidavit of proof of service handed over today shows that respondent No. 1 has been served at the said e-mail ID.

7. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC') shall appoint a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of DIAC.
- iii) The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- 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/counter-claims and 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.
8. The petition is disposed of in the aforesaid terms.
9. The affidavit of proof of service is taken on record.

JASMEET SINGH, J

AUGUST 8, 2024/NG

Click here to check corrigendum, if any