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

+ ARB.P. 770/2024&I.A. 30587/2024, I.A. 30588/2024

M/S. INDIABULLS HOUSING FINANCE LTD.

.....Petitioner

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

versus

MR. BHARAT KUMAR MOTHIA AND ANR.Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

23.07.2024

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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 dispute between the parties arising out of Loan Agreement dated 22.06.2018.
2. The petitioner extended loan to the respondent *vide* Loan Agreement dated 22.06.2018 in which an amount of Rs. 16,72,658/- was disbursed.
3. The respondent created an equitable mortgage of Flat No- G4, Ground Floor, Plot No-F-104, Manglam City, Gram Hathoj Kalwar Road, Jaipur- 302012, Rajasthan.
4. Since there were disputes between the parties, the petitioner invoked the SARFAESI proceedings *vide* Notice dated 30.03.2022. Under the said proceedings, the petitioner was able to recover a sum of Rs. 9,06,000/-.



5. As there were still amounts due and payable to the petitioner, the petitioner invoked the arbitration clause i.e. Article 14 of Loan Agreement vide Legal Notice dated 02.02.2024. Hence the present petition.

6. Mr. Khanna, learned counsel for the petitioner has drawn my attention to the Loan Application form, wherein the e-mail id of the respondent has been shown as “B.K.MOTHIA@gmail.com” and Mobile No. as 9079631668.

7. When the petition was listed, notice was issued to the respondents and as per office noting, the respondents have been served on the said e-mail as well as whatsapp No. 9079631668.

8. The issue 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:00156* 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 the 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.

9. Further, I am satisfied that the respondents have been served and still chosen not to appear.

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

- i) Ms. Manisha Singh (Adv.) (Mob. No. 9811941496) is appointed as a Sole Arbitrator to adjudicate the disputes between



the parties.

ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

11. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JULY 23, 2024/NG

[Click here to check corrigendum, if any](#)