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

+ **ARB.P. 874/2024**

INDIABULLS HOUSING FINANCE LTDPetitioner

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

versus

ARVIND KUMAR YADAV AND ANR.

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

06.09.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator for adjudication of disputes arising out of Loan Agreement dated 24.02.2018 pursuant to which the petitioner disbursed a loan of Rs. 13,07,692/-.
2. The respondent also created an equitable mortgage of property of property bearing Plot No. 54, MIG-2, Sector – A, New Dewas Zone No.2, Dewas, Dewas – 455001, Madhya Pradesh.
3. Article 12 of the Loan Agreement contains arbitration clause which reads as under:

“ARTICLE12: ARBITRATION

12.1 This 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 be 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;”

4. On default in making EMI's by the respondent, petitioner issued notice under section 13(2) of SARFAESI Act, 2002. The mortgage asset was auctioned and sold for an amount of Rs. 13,16,000. However, the claims of the petitioner was still not satisfied and still an amount of Rs. 11,82,675 is outstanding as on 28.02.2022 against the respondents.
5. The petitioner invoked the arbitration clause vide legal notice dated 28.03.2024. Hence the present petition.
6. 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 dispute between the parties is referred to the arbitration.

7. Both the respondents are the co-borrowers of the loan. The mobile number given in the loan application form is 8770719912.

8. As per the affidavit of service, the respondents have been served through *WhatsApp* on the said number and the screenshot of the *WhatsApp* chat shows a double tick.

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

- i) Mr. Brijender Singh, Advocate (Mob. No. 9810616615) 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 Delhi International Arbitration Centre (Administrative Cost and Arbitrator's Fees) Rules, 2018.
- 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 and 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.
10. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 6, 2024

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