



2024:DHC:9897



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

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Date of Decision: 20.12.2024+ **ARB.P. 876/2024**

M/S INDIABULLS HOUSING FINANCE LTD.

.....Petitioner

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

versus

KEWAL KRISHAN KUMAR AND ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Loan Agreement (hereinafter "the Agreement") dated 27.02.2016 executed between the petitioner and the respondents under which a total amount of Rs. 2,05,00,000/- was given as loan against mortgaged property bearing Khasra No. 70 MIN (1 - Bigha), Khasra No. 70 (0 – 16 Biswas) & Khasra No. 122 (01 – Bigha, 19 Biswas) Revenue Estate of Village Siraspur, New Delhi - 110042.
3. The loan agreement between the parties contains an arbitration clause as under:

**“ARTICLE 12 : 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.”

4. It is submitted that the respondents started defaulting the EMI and consequently, the petitioner issued a notice dated 24.06.2017 under Section 13(2) of the SARFAESI Act, 2002 for repayment of the outstanding amount. It is stated that the mortgaged property was auctioned for a sum of Rs.16,00,000/- for realising the outstanding loan amount. Further, upon adjusting the amount recovered by way of auctioning the mortgaged property, a sum of Rs. 1,00,83,594/- is stated to be unrecovered/ unpaid as on 22.12.2020 on account of ‘loss on sale’.

5. Since the disputes between the parties persisted, the petitioner issued a demand notice dated 22.11.2023 Pursuant thereto, vide letter dated 23.12.2023, the petitioner as per Article 12 of the agreement appointed a Sole Arbitrator for adjudication of the disputes between the parties.



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However, since the appointment was unilateral, the learned Sole Arbitrator vide order dated 25.01.2024 terminated its mandate.

6. Thereafter, upon the termination of mandate, the petitioner issued a fresh demand notice cum notice for arbitration on 02.02.2024 to the respondents. However, the respondents failed to respond

7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

8. In the present proceedings, notice was issued by the Court on 01.07.2024. However, since none appeared on behalf of the respondents, the Court vide order dated 06.09.2024 granted liberty to the petitioner to file an application for substituted service of the respondents. Vide order dated 24.09.2024, an application under Order V Rule 20 of the CPC, 1908, filed by the petitioner, for substituted service, was allowed by the learned Joint Registrar (Judicial). An affidavit of service dated 12.12.2024 has been filed by the petitioner in which it is stated that the publication was duly published on 10.12.2024 in “*The Times of India*” and “*Jansatta (Delhi edition)*”.

9. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondents and has thereby discharged its onus to effect service on the respondents.

10. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

11. Since the existence of the arbitration clause is evident from a perusal



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of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666.

12. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

13. Accordingly, Mr. Abhishek Mahajan, Advocate (Mob. No.: +91 9810981062) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. 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.

17. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.



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18. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 20, 2024/ak

Signature Not Verified

Digitally Signed By: ROHIT
KUMAR PATEL
Signing Date: 24.12.2024
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