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

+ **ARB.P. 883/2024**

**INDIABULLS HOUSING FINANCE LTD** .....Petitioner

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

versus

**DAMODHAR KONTHAM & ORS.** .....Respondent

Through:

**CORAM:**  
**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**18.09.2024**

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole arbitrator.
2. The facts are that a Loan Agreement was executed between the petitioner and the Respondents bearing Loan A/C No. HHLKAD00438567 on 21.05.2018, whereby the petitioner had disbursed a loan of Rs. 25,14,316/- against mortgaged property situated at Flat No-FF4, (West Facing Flat), 4th Floor, Sree Swathi Royal Heights, Near Kakinada Public School, Valasapakala Village & Panchayat, Kakinada Rural, E.G.DT. Residential Area, East Godavari, Andhra Pradesh property.
3. The arbitration clause is Clause 12 of the Loan Agreement dated 21.05.2018.

**“ARTICLE 12: ARBITRATION**



*This Loan Documents is/ shall be governed by Indian laws and 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 of securing the appointment/ nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by Arbitration & Conciliation Act, 1996 (or any statutory reenactment thereof, for the time being in force) and shall be in 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. The loan was availed by the Respondent No. 2 and respondent No. 1 and 3 stood as co borrowers in the Loan Agreement. Since respondents started defaulting on the EMIs, the petitioner issued a notice dated 11.05.2021 under section 13 (2) of the SARFAESI act, 2002 for the repayment of the outstanding loan amount of Rs. 27,20,214/-.
5. Subsequently, the mortgaged property was auctioned by the petitioner on 18.07.2023 for a total amount of Rs 22,10,000/-, however upon adjusting the auctioned value a sum of Rs 11,17,049/- is still outstanding.



6. Hence the present petition.
7. 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.
8. Furthermore, notice in the present petition was issued on 02.07.2024, and as per affidavit of service, the respondents have been duly served at sanghikkd@gmail.com, which is the Email ID mentioned in the Loan Application form.
9. For the said reasons, I am satisfied that the respondents have been served and despite service there is nobody appearing on behalf of the respondent.
10. Since disputes are still subsisting between the parties, the petition is allowed and the following directions are issued:-
  - i. Ms. Prema Priyadarshini (Adv) (Mob. No. 9818107970) 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').



- iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- 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.

**JASMEET SINGH, J**

**SEPTEMBER 18, 2024/NG**