



2024:DHC:8908



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.11.2024

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ARB.P. 914/2024**INDIABULLS HOUSING FINANCE LTD.****.....Petitioner****Through: Mr. Raghav Khanna and Mr.
Siddharth Nayak, Advs.****versus****SAGAR VILAS DHANAWADE AND ANR.****.....Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*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 dated 31.03.2017 (hereinafter "*the Agreement*") entered into between the petitioner and the respondents under which an amount of Rs.21,00,000/- was given as loan against mortgaged property bearing Flat No. 404, 4th floor wing-D, Shreeji Garden, Gut No. 111 Valivali Chowk, Barvi Dam Road, Badlapur- W, Thane- 421503, Maharashtra.
3. It is submitted that the respondents started defaulting in the EMI and consequently, the petitioner issued a notice dated 22.11.2019 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.17,20,000/- for realising the outstanding loan amount. Further, upon



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adjusting the amount recovered by way of auctioning the mortgaged property, a sum of Rs.15,77,567/- is stated to be unrecovered/ unpaid as on 20.07.2023. The disputes sought to be raised by the petitioner are with regard to this unrecovered/ unpaid amount.

4. The Agreement between the parties contains an arbitration clause as under:-

“14. 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 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.”

5. None has appeared for the respondents in these proceedings. An affidavit of service was filed by the petitioner on 03.09.2024 wherein it was stated that the petitioner has attempted to effect service upon the respondents through speed post and courier at the addresses of the respondents mentioned in the agreement.

6. The courier, which is stated to have been addressed to the respondent



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no.1, is stated to have been delivered. However, the courier addressed to respondent no.2 returned with remarks 'returned to shipper'. The respondents, could not be served through speed post, as the same was returned with endorsement "item returned unclaimed". However, it is stated in the said affidavit, that the entire paper book has also been served to the respondents through email i.e. sagdhanawade2014@gmail.com. Learned counsel for the petitioner submits that the said email address was duly mentioned by the respondent in the Agreement. Further, he submits that the respondents have also been served through Whatsapp. *Vide* order dated 26.09.2024, 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), pursuant to which, the respondents are also stated to have been served through publication.

7. In the aforesaid circumstances, the present petition has been taken up for hearing and disposal, despite non-appearance of the respondents.

8. Since the existence of the arbitration agreement is evident from a perusal of the Agreement, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties. Further, in terms of the judgment 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, **Bharat Broadband Network Limited v. United Telecoms Limited.**, 2019 SCC OnLine SC 547, it is incumbent upon this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

9. Accordingly, Ms. Mishika Bajpai, Advocate (Mob. No.: +91 9811840277) is appointed as the Sole Arbitrator to adjudicate the disputes



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between the parties.

10. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

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

13. Parties shall share the arbitrator's fee and arbitral cost, equally.

14. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

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

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

SACHIN DATTA, J

NOVEMBER 18, 2024/at