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

+ **ARB.P. 1152/2022 & I.A. 3188/2024**

OVINGTON FINANCE PRIVATE LIMITEDPetitioner

Through: Mr. Sandeep Bansal and Mr.
Rishabh Tripathi, Advocates.

versus

MR. ARJUN SINGH & ANR.Respondents

Through: Mr. Harender Sangwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.08.2024

1. Further to the order dated 16.08.2024, Mr. Harender Sangwan, learned counsel, who is appearing behalf of the respondents, has filed an affidavit dated 23.08.2024, in which it is stated that he has served a copy of the said order by WhatsApp and e-mail upon one of the legal representatives of the deceased respondent No.1. He has stated that the said representative was the only representative of the respondents who was in touch with him. The respondents nonetheless remain unrepresented.

2. As recorded in the order dated 16.08.2024, substitution of the legal representatives of deceased respondent No.1 was permitted on consent by the order of the learned Joint Registrar dated 20.05.2024. There is, therefore, no impediment in proceeding with the hearing.

3. By way of this petition, under Section 11 of the Arbitration and



Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Loan Agreement dated 23.12.2020 [“Loan Agreement”]. The Agreement contains an arbitration clause [Article 12], which provides for adjudication of disputes by a sole arbitrator. New Delhi/Delhi has been designated as the place of arbitration.

4. Disputes having arisen between the parties, the petitioner addressed a communication dated 18.07.2022 to the respondents invoking arbitration. As the communication did not elicit a response, the petitioner has approached this Court under Section 11 of the Act.

5. Notice was issued on 11.10.2022, and Mr. Sangwan, learned counsel, entered appearance on behalf of both the respondents. He has also filed a reply on behalf of respondent No.2 as respondent No.1 died on 29.09.2023. Learned counsel for the petitioner thereafter filed I.A 29701/2024 for substitution of the legal heirs of respondent No. 1. The said application was allowed by the aforesaid order dated 20.05.2024.

6. The only question to be considered at this stage is with regard to the existence of an arbitration agreement. Upon the referral Court being satisfied *prima facie* as to the existence of an arbitration agreement, the matter is to be referred to arbitration, leaving it open to the parties to take their respective rights and contentions before the learned arbitrator.

7. Having regard to the material placed on record, particularly the Loan Agreement signed by the respondents, I am *prima facie* satisfied as to the existence of the arbitration clause between the parties. The Loan Agreement specifically states that it is binding upon the heirs of the borrowers. The respondents have also not appeared to controvert these



submissions.

8. The petition is, therefore, liable to succeed and the disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel.

9. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned arbitrator.

10. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. As the respondents are effectively unrepresented, it is clarified that they will be duly served in accordance with the DIAC Rules in the arbitration proceedings.

12. It is made clear that all rights and contentions of the parties, including as to the question of maintainability and merits, are left open for adjudication by the learned arbitrator.

13. The petition is disposed of in terms of the above.

PRATEEK JALAN, J

AUGUST 29, 2024

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