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

+ **ARB.P. 924/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner
Through: **Ms. Mehvish Khan, Advocate.**

versus

**SHARMA DIESEL THROUGH ITS PROPRIETOR SH
CHINTAN NAITHANI AND ANR.**Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **09.09.2024**

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 30.05.2022 entitled “*Loan Agreement*” [“the Agreement”].
2. The Agreement contains an arbitration clause [clause 8.2], which provides for resolution of disputes by arbitration of a sole arbitrator appointed by the petitioner. New Delhi has been designated as the seat of arbitration. Courts in Delhi have also been vested with exclusive jurisdiction over the Agreement [clause 7.1].
3. Disputes having arisen between the parties, the petitioner invoked arbitration by notice dated 11.06.2024 to the respondents. As the invocation notice failed to elicit a response, the petitioner has approached this Court under Section 11 of the Act.

ARB.P. 924/2024

Page 1 of 3



4. The petitioner has impleaded two respondents - Sharma Diesel through its proprietor Shri Chintan Naithani and Smt Nidhi Naithani [wife of Shri Chintan Naithani]. Although the Agreement lists Sharma Diesel and Shri Chintan Naithani as separate borrowers, it is clear that Sharma Diesel is nothing but a proprietorship concern of Shri Chintan Naithani.

5. Notice was issued in this petition on 05.07.2024. The Agreement records the e-mail address of both Shri Chintan Naithani and Smt. Nidhi Naithani as “chintanrudra5@gmail.com”. The Registry reports that service has been effected by e-mail at the above e-mail address. Ms. Mehvish Khan, learned counsel for the petitioner, has also filed an affidavit of service dated 04.09.2024, stating that a copy of the petition has been served at the said e-mail address and the e-mail has not bounced back. As the respondents have not entered appearance despite service as aforesaid, the petition is taken up for hearing.

6. At the stage of proceedings under Section 11 of the Act, the Court is only required to satisfy itself, *prima facie*, as to the existence of an arbitration agreement. Having regard to the material on record, including clause 8.2 of the Agreement, I am of the view that the petitioner has made out a case for appointment of an arbitrator, leaving all questions on maintainability and merits open for adjudication by the learned arbitrator.

7. In view of the above, the petition is allowed and the disputes between the parties under the Loan Agreement dated 30.05.2022 are referred to arbitration under the aegis of Delhi International Arbitration Centre [“DIAC”]. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned arbitrator.



8. DIAC is requested to nominate an arbitrator from its panel. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. As the respondents have not entered appearance in these proceedings, it is made clear that the respondents are to be served afresh, in accordance with DIAC Rules, in the arbitration proceedings.

10. Needless to say, all rights and contentions of the parties, including arbitrability, maintainability of the claims and on merits, are left open for adjudication by the learned Arbitrator.

11. The petition stands disposed of in these terms.

PRATEEK JALAN, J

SEPTEMBER 9, 2024
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