



2024:DHC:7672



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

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Date of Decision : 30.09.2024+ **ARB.P. 925/2024****MONEYWISE FINANCIAL SERVICES PVT LTD**Petitioner

Through: Ms. Mehuish Khan, Advocate.

versus

ESS KAY ENTERPRISES**THROUGH ITS PROP HARSHIT GUPTA AND ORS.**

.....Respondents

Through: Mr. Karan Mehta, Advocate.

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 the Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of Master Loan Agreement dated 30.09.2022 (hereinafter '*the agreement*').
3. Pursuant to the said agreement the petitioner disbursed a loan of Rs. 25,22,323/- (Rupees Twenty-Five Lakhs Twenty-Two Thousand Three Hundred Twenty-Three Only) to the respondent. The loan amount was payable into 36 equal instalments of Rs.92, 458/-(ninety two thousand four hundred and fifty eight only).
4. Dispute/s have arisen between the parties on account of alleged default on the part of the respondent in paying the instalments. The respondents failed to make the payment despite being granted opportunities



to honour the outstanding dues.

5. The agreement between the parties contained an Arbitration Clause as under: -

“8.2 Arbitration: Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties, or termination (“Dispute”), shall be referred to a sole arbitrator duly appointed by the Lender. The language of the arbitration shall be English. The seat of the arbitration shall be at New Delhi and the language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator’s decision. The costs and expenses of the arbitration shall be borne equally by each party with each party paying for its own fees and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall be final and binding.”

6. Admittedly, the seat of the Arbitration is in Delhi.

7. Disputes having arisen between the parties, loan recall/termination notice dated 06.06.2023 was issued by the petitioner followed by a notice of invocation of arbitration dated 13.05.2024.

8. The notice of invocation was duly served upon the respondent via speed post on 15.05.2024. However, it is submitted by the petitioner that the respondent failed to respond to the same.

9. Learned counsel for the petitioner accede that in terms of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760***, it is incumbent on this Court to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

10. It is jointly requested that prior to adjudication of the disputes, the concerned arbitrator be also requested to pursue the possibility of a



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settlement of disputes between the parties through mediation as contemplated in Section 30 (1) of the A&C Act.

11. Accordingly, as jointly prayed, Mr. Sudhir Kumar Sharma, Advocate, (Mob. No.: 9811232930) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. Prior to adjudication of the dispute on merits, the learned Sole Arbitrator is requested to encourage the parties to arrive at a settlement through the mediation or any procedure as may be considered appropriate by the learned Arbitrator, as contemplated under Section 30(1) of the A&C Act.

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

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

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

16. 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.

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

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

SACHIN DATTA, J

SEPTEMBER 30, 2024/sl