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

+ **ARB.P. 949/2024 & I.A. 32492/2024**

**INDIABULLS HOUSING FINANCE LTD.**

.....Petitioner

Through: Mr. Raghav Khanna, Adv.

versus

**ASHISH GAUTAM AND ANR.**

.....Respondent

Through: None

**CORAM:**

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

**ORDER**

**08.10.2024**

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator arising out of the Loan Agreement dated 27.01.2018.
2. The respondent secured the loan through mortgage of property bearing Khasra No. 19/1 and 20/2, Mauja Ashrafpur Jalal, Pargana and Tehsil Koil, District Aligarh.
3. Since the respondent defaulted in making payment, the petitioner invoked the SARFAESI proceedings and sold the mortgaged asset.
4. After adjusting the mortgaged, there are amounts due and payable to the petitioner and hence, the petition seeking appointment of an Arbitrator.
5. The arbitration clause is contained as article 14 and reads as under:-



#### **“ARTICLE 14: ARBITRATION**

*The 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.”*

6. The respondent No.1 is the applicant and the respondent No.2 is the co-applicant.
7. The petitioner invoked the arbitration *vide* legal notice dated 03.06.2024.
8. As per the service report, the respondents have been served, but there is nobody appearing on behalf of the respondent.



9. 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.
10. For the said reasons, the petition is allowed and the following directions are issued:-
- i) DIAC will appoint an Arbitrator out of the Panel of the Advocates maintained by the DIAC.
  - 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.

13. Pending applications, if any, are disposed of.

**JASMEET SINGH, J**

**OCTOBER 8, 2024 / (MS)**

*Click here to check corrigendum, if any*