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

+ **ARB.P. 981/2024**

SANDHU MOTOR FINANCE PVT LTDPetitioner

Through: Ms. Sonali Arora, Adv.

versus

SH. AMIT KUMAR & ANR.Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

27.09.2024

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1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The facts are that the petitioner is a non banking finance company having its office at 2A/58, Geeta Colony, Delhi-110031 and is engaged in the business of providing loans for various reasons.
3. Respondent No. 1 was in need of personal loan and being desirous of such financial assistance, respondent No. 1 along with respondent No. 2 approached the petitioner seeking loan of Rs. 1 lakh.
4. The parties entered into a Loan Agreement on 15.12.2018 bearing No. SMF/2018/38 for a sum of Rs 1 lakh carrying interest at the rate of 36 % per annum for a period of 9 months whereby respondent No. 1 was the borrower and respondent No. 2 stood as a guarantor.
5. In discharge of the loan liability, the respondent issued a post dated cheque for Rs. 1,27,000/- inclusive of the principle amount along with the interest payable. The said cheque on presentation got dishonored.



6. Subsequently, the petitioner initiated a complaint against the respondents under section 138 of the Negotiable Instruments Act, 1881 which is in pending adjudication.

7. The loan agreement contains arbitration clause being Clause 17, which reads as under:-

“All disputes, differences and/or claims, arising out of this agreement, whether during its subsistence of thereafter shall be settled by arbitration in accordance with the provisions of Arbitration and Conciliation act, 1996 or any other statutory modification or re-enactment for the time being in force and shall be conducted by a sole arbitrator to be appointed by the lender...”

8. Since certain disputes were subsisting between the parties, the petitioner invoked arbitration *vide* legal notice dated 17.07.2021 in terms of the aforesaid arbitration clause. However, respondents did not appear in the arbitral proceedings and an ex-parte award was passed in favor of the petitioner and against the respondent on 01.04.2022.

9. Thereafter, the petitioner filed an execution petition before the Civil Judge, Shahadra seeking enforcement of the Arbitral Award dated 01.04.2022 and *vide* order dated 24.02.2024 the same was dismissed by the learned Civil Judge, Shahdara on account that an ex parte award is a nullity and cannot be enforced.

10. Hence the present petition.

11. Notice in the present petition was issued to the respondents on 09.07.2024. As per the service report the respondents have been served but there is no appearance on behalf of the respondent.

12. For the said reasons, the petition is allowed and the following



directions are issued:-

- i) Ms. Abha Malhotra, Adv. (Mob. No. 9810777876) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- 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.

JASMEET SINGH, J

SEPTEMBER 27, 2024/NG