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

+ **ARB.P. 1178/2022**

OVINGTON FINANCE PVT. LTD.

.....Petitioner

Through: Mr. Aniket Rajput and Mr. Vivek
Kumar, Advocates.

versus

HEMLATA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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01.08.2024

1. 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 an agreement dated 28.09.2020 [“the Agreement”], by which the petitioner advanced a loan to the respondent.
2. Article 12 of the Agreement contains an arbitration clause which provides for resolution of disputes by a sole arbitrator. It is also provided that the arbitration proceedings will be conducted at Delhi/New Delhi.
3. Disputes having arisen between the parties, the petitioner invoked arbitration by a legal notice dated 20.07.2022, to which it did not receive a response.
4. Notice was issued in the present petition on 18.10.2022. The Registry reports that ordinary service was duly effected and that service

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by speed post was refused.

5. The order dated 29.08.2023 records that the respondent was present in person through video conference. By the same order, parties were referred to mediation. During this process, the order dated 25.01.2024 also indicates that the respondent was represented by counsel, although the appearance was not given. There are also several mediation reports on record which suggest that both parties participated in mediation proceedings. Although the mediation proceedings have been closed unsuccessfully, it is evident from the above that the respondent has received notice of these proceedings. As she has nonetheless chosen to remain unrepresented even on the second call, the matter 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, leaving all rights and contentions of the parties, including on arbitrability and maintainability, open for adjudication by the learned arbitrator. Learned counsel for the petitioner, has drawn my attention to the aforesaid agreement dated 28.09.2020, which *prima-facie* contains an arbitration clause. The respondent has also chosen not to appear to controvert this assertion.

7. For the aforesaid reasons, the petition is allowed 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.

8. The arbitration proceedings will be governed by the Rules of



DIAC, including as to remuneration of the learned arbitrator.

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

10. All rights and contentions of the parties are left open for consideration by the learned arbitrator, including on maintainability and arbitrability, if any.

11. As the respondent is not represented today, it is made clear that she must be served in the arbitration proceedings in accordance with the DIAC Rules.

PRATEEK JALAN, J

AUGUST 1, 2024

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