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

+ O.M.P. (T) (COMM.) 108/2023

INDIABULLS HOUSING FINANCE LTD Petitioner

Through: Mr. Manik Dogra, Ms. Prutika Dwivedi, Mr. Abhishek Mohanty, Advs.

versus

RHC HOLDING PVT LTD & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

05.03.2024

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1. The present petition has been filed under Section 15(1)(a) and Section 15(2) of the Arbitration and Conciliation Act on behalf of the petitioner for substituting the existing arbitrator who has recused himself to conduct the arbitration proceedings.
2. Learned counsel submits that the parties had entered into a loan agreement dated 20.03.2015 in O.M.P. (T) (COMM.) 89/2023 & O.M.P. (T) (COMM.) 90/2023 and 16.03.2015 in O.M.P. (T) (COMM.) 108/2023. Since certain disputes arose, the petitioner invoked the arbitration clause vide notice dated 09.08.2019.
3. Pursuant to this, the respondents appointed Justice R. B. Mishra as the Sole Arbitrator vide communication dated 24.08.2019.
4. Learned Arbitrator initiated the proceedings and passed the first



procedural order on 07.09.2019. However, subsequently, O.M.P. (T) (COMM.) 129/2022 and was filed by the petitioner. The coordinate bench of this court vide order dated 22.05.2023 passed the following order:

“1. On 07.03.2023 learned counsel for respondent no.2 appeared but today none appears on behalf of both the respondents, hence the learned counsel for the petitioner submits the petition may be disposed of.

2. This petition is filed under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 praying the mandate of learned Arbitrator so appointed by the petitioner themselves, be terminated.

3. It is stated the prayer is made by the petitioner in view of TRF Ltd. vs. Energo Engineering Projects Ltd. (2017) 8 SCC 377; Perkins Eastman Architects DPC vs. HSCC (India) Ltd. (2020) 20 SCC 760 and other judgments.

4. The learned counsel for the petitioner also referred to the Article 11 of the loan agreement dated 16.03.2015 which contains arbitration clause. Earlier the petitioner had appointed (Retd.) Mr. Justice R.B.Mishra for adjudicating the disputes but because of law laid down in Perkins (supra) the petitioner intend to change the arbitrator and has requested this Court to appoint a new arbitrator.

5. Since no one is present today on behalf of respondent despite service, hence the prayer made in the petition is accepted and (Retd.) Mr. Justice Vinod Goel (Mob. No. 9910384637), is hereby appointed as an arbitrator in the present matter. The fee of the arbitrator shall be fixed as per rules of prescribed by Delhi International Arbitration Centre (DIAC).

6. In view of the above, the petition stands disposed of along with pending application(s). Order dasti.”



5. It is pertinent to mention here that the respondent did not appear in these proceedings also. Thereafter, Justice Vinod Goel, learned Sole Arbitrator issued notice to the parties and also held the proceedings and gave a declaration under Section 12(5) of the Act vide proceedings dated 30.05.2023. However, on 15.07.2023 learned Arbitrator passed the following order directing the termination of the arbitral proceedings in all the cases:

“1. The arbitral proceedings were held via video-conference on Zoom.

2. The Hon'ble High Court of Delhi by order dated 22.05.2023 in the above said cases no. O.M.P. (T) 12/2023, O.M.P. (T) 129/2022 and O.M.P. (T) 130/2022 appointed the undersigned as an Arbitrator in place of the previous arbitrator in the subject arbitrations between the parties mentioned above. On 26.05.2023, I had given my consent to be the Arbitrator between the parties while issuing them notice for 30.05.2023. On 30.05.2023, during first preliminary case management hearing, the undersigned provided Declaration for the purpose of Section 12 (1) (b) read with the Fifth, Sixth and Seventh Schedule of the Arbitration and Conciliation Act, 1996 ('Act') and ordered to issue notice to the respondents for appearance for today at 11.30 AM. The Tribunal sent the notices to the respondents in all three cases by Speed Post along with the copy of the Order dated 30.05.2023 separately. The notice issued to the respondent no. 1 was served as per the Tracking Reports in all three cases. The notices issued to the respondent no. 2 in all three cases received back with the report 'left without address'.

3. Today, the claimant's ld. counsel shared the virtual meeting link at 11.50 AM when the arbitral meeting could start. In fact, on 30.05.2023, in all three matters, while issuing notice to the respondents for today, this Tribunal



directed the claimant to file its SOC along with the documents within 4 weeks and further in consultation with and consent of the learned counsel for the claimant directed that in the meantime, an interim fee of Rs.1,00,000/- shall be remitted by the claimant in the bank account of the Sole Arbitrator, within 4 weeks subject to adjustment. The claimant has neither filed the SOC nor remitted the arbitral fee in either of the case. At this stage, Ms. Dwivedi very fairly informed that the claimant had not paid the arbitral fee to the previous arbitrator in these three cases.

4. In the circumstances, this Tribunal is of the firm opinion that continuation of the arbitral proceedings in all the above 3 cases are unnecessary u/s 32 (2) (d) of the Act, and while exercising this power u/s 32 (2) (d) and also under the second proviso to section 38 (2) of the Act, the Tribunal directs the termination of the arbitral proceedings in all three cases.”

6. This order was informed to the respondents by the petitioner vide email dated 15.07.2023. However, the respondents did not respond.
7. This left to the filing of the present petition filed under Section 15(1)(a) and Section 15(2) of the Arbitration and Conciliation Act. The summons was issued to the respondent. However, respondents this time also failed to appear.
8. As per the office noting, though respondents was served by ordinary means. The petitioner filed the affidavit of service and the same is on record.
9. Vide order dated 02.02.2024, the respondents were directed to be served through publication in the Statesman and Pioneer newspapers. Publication has duly been affected in the newspapers. However, respondents have failed to appear despite the expiry of 30 days.



10. Since the respondents have failed to appear. Mr. Justice Ajit Bharihoke, Former Judge, Delhi High Court (Mobile No. 9650110057) is appointed as the Sole arbitrator. The present petition is disposed of with the following directions:
- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - 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'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned arbitrator within two weeks from today.
11. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

MARCH 5, 2024/AR..