



2024:DHC:8461



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

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**Date of Decision: 29.10.2024**+ **ARB.P. 1206/2024****MONEYWISE FINANCIAL SERVICES PVT LTD. ....Petitioner****Through: Ms. Mehvish Khan and Mr. Aman  
Choudhary, Advs.****versus****BEHL HOSPITAL THROUGH ITS PROPRIETOR AND ORS.****.....Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL.)**

1. The present petition has been filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Master Loan Agreement dated 03.07.2017 executed between the petitioner and respondents, in terms of which respondent no.1 is the borrower, whereas respondent no 2 is co-borrower and respondent no.3 (Mrs. Shama Behl) is the guarantor.
3. As per the said agreement, the petitioner disbursed a loan of Rs. 10,00,000/- (Rupees Ten-Lakhs Only) to the respondents. The loan amount was payable into 36 equal instalments of Rs.37,163/- (rupees thirty-seven thousand one hundred and sixty-three only).
4. Dispute/s have arisen between the parties on account of alleged default on the part of the respondents in paying the requisite instalments.



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The respondents failed to make the payment despite being granted opportunities to clear the outstanding dues.

5. The arbitration clause in the Agreement between the parties, is in the following terms : -

*“10.2 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. Disputes having arisen between the parties, loan recall/termination notice dated 26.08.2019 was issued by the petitioner followed by a notice of invocation of guarantee dated 12.07.2024 to the respondent no. 3 (Mrs. Shama Behl). However, the respondents failed to respond to the same.

7. Thereafter, the petitioner issued a demand notice cum notice for invoking arbitration on 03.07.2024. However, again, the respondents failed to respond thereto. The petitioner has placed on record the relevant postal receipt to show that the said communication was delivered to the respondents.

8. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole arbitrator to



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adjudicate the dispute.

9. In the present proceedings, notice was issued by the Court on 08.08.2024 with a liberty to the respondents to file reply, to oppose the appointment of arbitrator within three weeks from the date of service. The petitioner has taken the requisite steps to serve the respondents at its known addresses. However, the communications sent to the said addresses *via* speed post were returned with the notations, “Item returned, addressee left without instructions” and “item returned, addressee cannot be located” whereas the communications sent *via* Courier were returned with the notations “return as per customer instruction” and “person/company shifted”.

10. The respondent is stated to have been served *via* email at behl\_hospital@rediffmail.com.

11. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondents not only at the last known address/es but also at the other addresses of the respondents and has thereby discharged its onus to effect service on the respondents.

12. Since the existence of the arbitration clause is evident from a perusal of the Master Loan Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (supra), ‘*TRF Limited v. Energo Engineering Projects Ltd*’, (2017) 8 SCC 377, ‘*Bharat*



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*Broadband Network Limited v. United Telecoms Limited.*, 2019 SCC OnLine SC 547 and '*Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*', 2023 SCC OnLine SC 1666.

13. Accordingly, Ms. Priyanka Dalal, Advocate (Mob. No.: +91.9878063152) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

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

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

18. 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.

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

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

**SACHIN DATTA, J**

**OCTOBER 29, 2024/sl**