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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 06.11.2024**+ **ARB.P. 1225/2024 & I.A. No. 35959/2024****MONEYWISE FINANCIAL SERVICES PRIVATE LIMITED**

.....Petitioner

Through: Ms. Mehvish Khan, Advocate.

versus

**PATNA CLINIC AND DIAGNOSTIC CENTRE THROUGH ITS
PROPRIETOR PAPPU KUMAR JHA AND ANR.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 for resolving the disputes arising between the parties. The disputes between the parties have arisen in context of a loan agreement dated 12.02.2019 wherein respondent no.1 is the borrower and respondents no. 2 & 3 are the co-borrowers.
2. The arbitration clause is contained in clause 10.1 of the aforesaid loan agreement, and reads as under:-

"10.1 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,



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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.”

3. None have appeared for the respondent despite notice being issued in the present petition on 09.08.2024. The petitioner has taken requisite steps to serve the respondent at the address mentioned in the Agreement itself. The affidavit of service dated 24.10.2024, filed by the petitioner, brings out that the respondent has been served with a copy of the present petition *via* speed post, courier and on the email addresses of the respondents mentioned in the loan agreement, i.e., pappukumarjha88@gmail.com and khusbu.jha89@gmail.com.

4. In the aforesaid circumstances, the matter has been taken up for consideration despite non-appearance of the respondent.

5. Since the existence of the arbitration clause is evident from a perusal of the 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.***, (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd.*** (2017) 8 SCC 377, ***Bharat 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***



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re, 2023 SCC OnLine SC 1666.

6. Accordingly, Ms. Shruti Sabharwal, Advocate (Mob.+919810057280) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

7. Respondents shall be entitled to raise appropriate jurisdictional objections, if any, before the learned sole arbitrator which shall be duly considered by the learned Sole Arbitrator in accordance with law.

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

9. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

10. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

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

12. The present petition stands disposed of in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

NOVEMBER 6, 2024/dn