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

+ **ARB.P. 1226/2024**

ENCORE ASSET RECONSTRUCTION COMPANY PVT. LTD.

.....Petitioner

Through: Ms. Sandhya Chawla, Advocate

versus

UNIVERSAL JOURNEYS INDIA PVT. LTD. & ORS.

.....Respondents

Through: Mr Tarun Agarwal, Mr Shrey Patnaik,
Mr Bhaskar Agarwal, Mr Ritwik
Batra, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

10.12.2024

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1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Loan Agreement dated 30.06.2018 which was entered into between Riviera Investors Private Limited and the Respondent herein.
2. Clause 20(3) of the said Agreement, which is an arbitration clause, reads as under:

“Any dispute between the parties arising out of or in relation to this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitral



tribunal shall consist of sole arbitrator nominated by the lender. The arbitral award shall be final and binding on the parties and the parties waive irrevocably any rights to any form of appeal, review or recourse to any state or other judicial authority in so far as such waiver may validly be made, except for the enforcement of an arbitration award granted pursuant to this Clause 21. The venue of the arbitration shall be as specified Schedule I hereto. The language of the arbitration shall be English. The parties shall bear their own legal and other costs and expenses necessary with respect to such arbitration, without prejudice to the arbitrator's right to award costs or require any party to the arbitration to pay the costs and expenses of the other parties."

3. Pursuant to the Loan Agreement dated 30.06.2018, there was an Assignment of all the loan accounts of Riviera Investors Private Limited to Encore Asset Reconstruction Company Pvt., Ltd., by an deed of Assignment 30.03.2022. Due to defaults in the repayment of the loan, a loan recall notice was sent to the Respondent for repayment of Rs.31,67,445.24 and since the amount has not been paid, the Arbitration has been invoked. The copy of the Loan Agreement dated 30.06.2018 reveals the existence of an Arbitration Clause.

4. Section 11 of the SARFAESI Act reads as under:

"11. Resolution of disputes.—*Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or [asset reconstruction company] or [qualified buyer], such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as*



if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

5. Learned Counsel for the Petitioner relies on the judgment of the Apex Court in Transcore v. Union of India, (2008) 1 SCC 125 wherein it is settled that assignment of debt is a part of the banking transaction and that the creditor has assigned for which he did not take any consent from the creditor and that the creditor would be bound by the terms of the Agreement.
6. It is the case of the Respondent that the Respondent had signed a Loan Agreement dated 30.06.2018 with Riviera Investors Private Limited. It is stated that no permission was taken by the Respondent when the debts were being assigned to Encore Asset Reconstruction Company Pvt., Ltd. It is therefore stated that there is no valid Agreement between the Petitioner and the Respondent and therefore, the Arbitration cannot be instituted. It is also stated that Assignment Agreement dated 30.03.2022 does not talk of transferring the Arbitration Clause.
7. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.
8. Accordingly, Ms. Preeti Goel, Advocate, (Mob. No.9821761687) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.
9. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the



Schedule of Fees maintained by the DIAC.

10. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

11. 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.

12. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

13. It is always open for the Respondent to argue regarding the existence of the Arbitration Agreement between the Petitioner and the Respondent before the Ld. Arbitrator. This Court is not giving any opinion on the said point.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2024

RJ