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

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Date of Decision: 22.11.2024+ **ARB.P. 1232/2024****MONEYWISE FINANCIAL SERVICES PVT LTD**

.....Petitioner

Through: Mr. Mehvish Khan, Mr. Aman
Choudhary, Advs.

versus

OM INDUSTRIES THROUGH ITS PROPRIETOR**MR. PRASHANT THAKKAR & 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 referred as '*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 context of a Master Loan Agreement dated 12.10.2018(hereinafter '*the agreement*') executed between the petitioner and the respondents, in terms of which, the respondent no.1 is a borrower and respondent no.2 is a co-borrower.
3. As per the said agreement, a loan of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) was disbursed by the petitioner. The loan amount was payable by the respondents in 36 equal instalments of Rs.90,381/- (Rupees Ninety Thousand Three Hundred and Eighty-One only) each.



4. Disputes between the parties have arisen on account of the alleged default by the respondents in paying the requisite instalments payable under the agreement.

5. The arbitration clause in the said agreement is in the following terms:

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*“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, 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, a loan recall/termination notice dated 06.04.2019 was issued by the petitioner followed by a notice for invoking arbitration on 20.06.2024. However, the respondents failed to respond to the same. In the above circumstances, the present petition has been filed.

7. None has appeared for the respondents in these proceedings despite notice being issued by this Court on 12.08.2024. An affidavit of service was filed by the petitioner on 16.11.2024 wherein it was stated that the petitioner has attempted to effect service upon the respondents through speed post and courier at the addresses of both the respondents. The speed post, which is stated to have been addressed to the respondent no. 1, is stated to have been



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delivered. However, the speed post addressed to respondent no.2 was returned with the remarks, “*Item Returned Addressee Left without instructions*” and the courier addressed to the said respondent was returned with the remarks, “*Return to branch*”.

8. 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 taken due steps to effect service on the respondents.

9. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

10. 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*** (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, ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532.

11. Accordingly, Ms. Prity Sharma, Advocate (Mob. No.: +91 9911028589) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. The respondents shall be at liberty to raise preliminary objections as



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regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

13. 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.

14. At request of the petitioner, the arbitration shall take place under the aegis of and under the rules of the Delhi International Arbitration Centre (DIAC). It is directed accordingly.

15. 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.

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

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

SACHIN DATTA, J

NOVEMBER 18, 2024/Gm