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

% ***Date of Decision : 22.11.2024***

\+ **ARB.P. 1233/2024**

MONEYWISE FINANCIAL SERVICES PVT LTD .....Petitioner

Through: Ms. Mehvish Khan, Ms. Arunima S. Jadaun and Mr. Aman Choudhary, Advocates.

versus

OUR SPACE INFRA DEVELOPERS PVT LTD THROUGH ITS DIRECTORS 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 referred as '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 24.04.2019 executed between the petitioner and the respondents, in terms of which the respondent no.1 is a borrower, whereas the respondent no.2 and respondent no. 3 were the co-borrowers.

3. As per the said agreement, the petitioner disbursed a loan of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) to the respondents. The loan amount was payable in 24 equal instalments of Rs.,76,344/- (Rupees Seventy-Six Thousand Three Hundred and Forty-Four only).

4. Dispute/s have arisen between the parties on account of alleged

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default on the part of the respondents in paying the requisite instalments. 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: -

> *"10.1 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 it 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 get 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 12.12.2019 was issued by the petitioner followed by a notice for invoking arbitration on 08.07.2024. However, the respondents failed to respond to the same.

7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

8. In the present proceedings, notice was issued by the Court on 12.08.2024. The petitioner has taken the requisite steps to serve the respondents at its known addresses. The petitioner has taken requisite steps to serve the respondent at its known addresses. The communication sent to

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the said addresses *via* speed post were returned with notations "*Item Returned, Insufficient address*", "*Item Returned, Addressee Left without instructions" and* "*Item Returned, Addressee moved*", whereas the communications sent *via* courier were returned with notations "*Return to Branch"*. The relevant tracking reports have been placed on record along with the affidavit of service dated 18.11.2024, filed on behalf of the petitioner.

9. It is stated that the respondents have also been served *via* email at jailalraibari@gmail.com and permraibari@gmail.com.

10. 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 and has thereby discharged its onus to effect service on the respondents.

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

12. Since the existence of the arbitration clause is evident from a perusal of the Master Loan Agreement, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666.

13. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF***

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***Limited v. Energo Engineering Projects Ltd,*** (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

14. Accordingly, Mr. Varun Kathuria, Advocate (Mob. No.: +91 9810118367) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondents 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.

16. 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.

17. At request of the petitioner, the arbitration shall take place under the aegis of and as per the Rules of the Delhi International Arbitration Centre (DIAC).

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**

**NOVEMBER 22, 2024/*gm/sl***

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