



\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 1310/2023

SUKOMAL ALAG & ANR.

..... Petitioners

Through: Mr. Arjun Syal, Mr. Shreyan Das
and Mr. Rohit Kumar, Advs. (M.
9971322560)

versus

KOTAK MAHINDRA BANK LTD

..... Respondent

Through: Mr. Anupam Singh, Mr. Abhishek
Mahajan and Ms. Nika Tiwari,
Advs. (M. 9612599959)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

09.02.2024

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the Petitioners-Sukomal Alag and Gurdayal Singh seeking appointment of an Arbitrator in terms of Clause 12.9 of the Loan Agreement dated 20th April, 2022. The said clause reads as under:

“12.9 Arbitration

Unless the Same falls within the jurisdiction of the Debt Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act. 1993, or any other competent authority for Debt related disputes constituted in any other law in future or which are in force, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The venue of arbitration shall be, in either Mumbai or New Delhi or Chennai or Kolkata or at the Concerned Branch at the sole discretion of the Bank.



The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and the award of such Arbitrator shall be final and binding upon the Parties hereto.”

3. The case of the Petitioners is that they took a loan for the purpose of renovation of the personal property situated in Pitampura, New Delhi and the loan of Rs.1.90 crores was sanctioned.
4. Later, in October 2022, when the Petitioners sought to foreclose the loan, the Kotak Mahindra Bank imposed foreclosure charges contrary to RBI guidelines, claiming these charges applied despite the loan's personal use nature. The Petitioners made several requests for foreclosure, which were met with additional enforcement of foreclosure charges, leading to continued payment of EMIs and interest by the petitioners.
5. Thereafter, a Section 9 petition was also filed being ***O.M.P.(I)(COMM) 67/2023*** titled ***Sukomal Alag and anr. v. Kotak Mahindra Bank Ltd.*** before the Id. District Judge (Commercial-03), Patiala House, New Delhi. Vide judgement dated 13th October, 2023, the Id. District Judge restrained the Kotak Mahindra Bank from taking any coercive steps against the Petitioners subject to the deposit of Rs. 1.85 crores with the said Bank. Further, the Id. District Judge observed that a conjoint reading of the clauses made it clear that Delhi Courts had jurisdiction to entertain the present dispute. Further, during the pendency of the Section 9 petition, the Petitioners issued notice invoking arbitration in terms of Section 21 of the Arbitration and Conciliation Act, 1996 dated 6th October, 2023.
6. The Petitioners had paid a sum of Rs.1.85 crores in addition to the



EMIs that were paid. According to the Petitioners, though the outstanding amount has been paid, the bank is demanding higher amounts. The case of the Petitioners, vide communication dated 20th April, 2023 is that personal loan is being converted into business loan.

7. The Kotak Mahindra Bank refutes this and submits that the amounts being charged are in terms of the said Loan Agreement.

8. Considering the nature of the disputes, **Ms. Maninder Acharya, Senior Advocate (M:9810163078)** is appointed as the Arbitrator to adjudicate the disputes between the parties. The arbitration proceedings shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC). Let the parties appear before the DIAC on 21st March, 2024.

9. The fee of the Id. Arbitrator shall be as per the Fourth Schedule of the Act as modified by the DIAC Rules.

10. Let a copy of the present order be communicated to the Secretary, DIAC on email id - delhiarbitrationcentre@gmail.com.

11. Petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 09, 2024

Rahul/dn