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

Date of decision:- 25th April, 2024.

\+ **ARB.P. 1324/2023**

CSL FINANCE LIMITED ..... Petitioner
Through: Appearance not given.
versus

SARTHIK EDUCATIONAL TRUST AND ORS...... Respondent
Through: Mr. Rohit Suri, and Ms. Geetika Kapur, Advs. (M: 9810671377)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 *(hereinafter, '1996 Act')* filed by the Petitioner-CSL Finance Ltd., arises out of a Loan Agreement dated 31st July, 2019 along with the Loan Sanction letter dated 11th July, 2019 *(hereinafter, 'Agreements')*, by which a total loan of Rs.23 lakhs was disbursed to the following Respondents:

- Respondent No. 1-Sarthik Education Trust
- Respondent No. 2-Kamlesh Jaglan
- Respondent No. 3- Balwan Singh
- Respondent No. 4-Gurvinder Singh
- Respondent No. 5-Surinder Singh

3. Respondent No.1 is the principal borrower, and Respondent Nos. 2-5 are the co-borrowers, who availed of the loan in terms of the said

Agreements. The said loan was secured by the Respondents by submitting original title deeds of a property in Nasirpur, Ambala.

4. However, as per the Petitioner, the Respondents failed to adhere the terms and conditions of the said Loan Agreement dated 31st July, 2019, by not paying the outstanding dues, despite several reminders. Thereafter, the Petitioner was constrained to issue Loan Recall Notice dated 30th August, 2021, calling upon the said Respondents to pay the entire loan amount. Since the Respondents failed to comply with the Loan Recall Notice, notice invoking arbitration under Section 21 of the 1996 Act dated 5th July, 2023, was issued by the Petitioner. As per the petition, the said letter has not been replied to by the Respondents.

5. The said Loan Agreement consists of an arbitration clause i.e. Clause 17, which reads as under:

> *"17. **ARBITRATION***
> *All disputes, differences, claims, questions or disputes(s) of any nature whatsoever arising in connection with or incidental to or in respect of interpretation or scope of this agreement and its related documents or any part thereof between CSL FINANCE LIMITED and/or its representatives and/or its assigns on the one hand and the Borrower(s) and the Guarantor(s) on the other hand, touching and concerning these presents or anything herein contained or in any way relating to or arising from these presents shall be referred to a Sole arbitrator to be solely appointed by CSL FINANCE LIMITED.*
>
> *The arbitration proceeding will be governed by the provision of Arbitration & Conciliation Act, 1996 or any subsequent amendments as may be made from time to time. The Arbitrator so appointed shall formulate his procedure and shall be entitled to dispose of the*

> *proceedings in a summary manner. The language of the Arbitration proceedings shall be in English. The award of such arbitrator so appointed shall be final and binding on all the parties to this Agreement. Such arbitration proceedings will be at Delhi. The sole arbitrator shall pronounce the award as expeditiously as possible alter entering on the reference or within such time as he may deem expedient. The pronouncement of the award by the arbitrator in a meeting of the parties fixed after the conclusion of the arbitration proceedings shall deemed to be the publication of the award and shall be construed the date of receipt of the award by the Borrower(s)/ Guarantor(s) and CSL FINANCE LTD. The costs and expenses of the arbitration proceedings shall be borne by the Borrower(s)/ Guarantor(s). The arbitrator will not be required to give reasons in support of his award, The place and seat of Arbitration shall be at Delhi"*

6. Notice in the present petition was issued on 14th December, 2023. The Respondents were directed to reply to the present petition on 9th February, 2024.

7. The case of the Petitioner is that the loan amount, along with the interest has not been repaid by the Respondents. Ld. counsel for the Petitioner submits that an arbitrator be appointed in accordance with the above arbitration clause.

8. On behalf of the Respondents, a reply is stated to have been filed; however, it is not on record. A copy of the reply has been handed over to the Court today. The main submission made by Mr. Suri, ld. Counsel for the Respondents, is that there is a matter pending before the Punjab and Haryana High Court, where certain reliefs have been granted to the Respondents.

9. Countering this, Mr. Sen, ld. Counsel, submits that the Petitioner had initiated proceedings under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (‘*SARFAESI Act’*), and these proceedings resulted in a petition before the Punjab and Haryana High Court being ***CWP 17531/2022*** titled ***‘M/s. Sarthak Education Trust and Anr. v. CSL Finance Ltd.***’. In terms of the order dated 28th September, 2022, the property that was given as security was released in favor of the Respondents after payment of Rs. 8 lakhs; however, there was no stay of arbitration proceedings. This position is not disputed by Ld. Counsel appearing for the Respondents.

10. Further, following the decision of the Supreme Court in ***M.D. Frozen Foods Exports Pvt. Ltd. & Ors. v. Hero Fincorp Limited [2017] 13 S.C.R. 800***, it is clear that provisions of the SARFAESI Act are a remedy in addition to the provisions of the 1996 Act. In the said decision, the Supreme Court has clearly held that SARFAESI proceedings and arbitration proceedings which are civil proceedings, provide cumulative remedies i.e., they are not in derogation or conflict with each other. The relevant portions of the said decision are as follows:

> *“32. The aforesaid is not a case of election of remedies as was sought to be canvassed by learned senior counsel for the appellants, since the alternatives are between a Civil Court, Arbitral Tribunal or a Debt Recove1y Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an arbitral tribunal has been elected.* ***The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore vs. Union of India & Anr. (supra) it was clearly observed that the***

SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under A the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.

33. SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured B creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum."

11. According to clause 17 of the Loan Agreement, the seat of arbitration is Delhi. Further, the jurisdiction clause 18 of the Loan Agreement provides that the Courts at Delhi shall have exclusive jurisdiction. The place of business of the Petitioner is in Delhi, and the said Loan Agreement was executed at Delhi.

12. Accordingly, ***Mr. Gauhar Mirza, Advocate (M:9891826085) (email: adv.gmirza@gmail.com)*** is appointed as the Arbitrator to adjudicate the disputes between the parties.

13. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be paid as per Fourth Schedule under the 1996 Act as amended by the DIAC Rules, 2023.

14. The petition is disposed of. All pending applications is also disposed of.

15. List before the DIAC on 21st May, 2024.

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

PRATHIBA M. SINGH
JUDGE

APRIL 25, 2024
dj/dn