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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22.11.2024

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ARB.P. 1320/2024**MONEYWISE FINANCIAL SERVICES PVT LTD**Petitioner

Through: Ms. Mehvish Khan, Adv.

versus

ALOK TRIPATHI AND ANR

.....Respondents

Through: Mr. P.S. Sachdeva, Adv. (through
v/c)**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 03.01.2019 executed between the petitioner and the respondents, in terms of which the respondents are the 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 36 equal instalments of Rs. 56,513/- (Fifty-Six Thousand Five Hundred and Thirteen only).
4. Dispute/s have arisen between the parties on account of alleged default on the part of the respondents in repaying the loan amount.
5. The arbitration clause in the Agreement between the parties, is in the



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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 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 notice dated 08.12.2020 was issued by the petitioner followed by a notice for invoking arbitration on 21.06.2024. 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/s.

8. Learned counsel for the respondent seeks to object to the appointment of an independent sole arbitrator to adjudicate the disputes between the parties on the ground that the claims in the present petition are time barred.

9. The aforesaid objection of learned counsel for the respondent does not constitute an impediment in constituting an arbitral tribunal to adjudicate the disputes between the parties. As held in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996***



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and the Indian Stamp Act, 1899 bearing the Curative Petition (C) No. 44/2023 decided on 14.12.2023, and *SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 53*, the scope of inquiry in the present petition is confined to ascertaining the existence of the arbitration agreement.

10. Moreover, in terms of the judgment 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 54, *Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company*, MANU/SC/1190/2024 it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

11. Learned counsel for the respondent also submits that the respondents should not be saddled with the cost of arbitration on preferring an *ex-facie* time-barred claim. Needless to say, it shall be open for the respondent to make appropriate prayers before the learned sole arbitrator regarding apportionment of cost.

12. Accordingly, Ms. Ritambhra Kalra, Advocate (Mobile No. +91 9773606577) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.



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15. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
16. 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.
17. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
18. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 22, 2024/at/sv