



\$~19

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 22.11.2024

+

ARB.P. 1321/2024**M/S MONEYWISE FINANCIAL SERVICES PVT LTD.....Petitioner****Through: Ms. Mehvish Khan, Advocate.****versus****M/S MALAD RESIDENCY THROUGH ITS PROPRIETOR SH.****THAJUDDIN K M****.....Respondent****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 26.04.2019 executed between the petitioner and the respondent, in terms of which the respondent is a borrower.
3. As per the said agreement, the petitioner disbursed a loan of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the respondent. The loan amount was payable in 24 equal instalments of Rs. 50,409/- (Rupees Fifty Thousand Four Hundred and Nine only).
4. Dispute/s have arisen between the parties on account of alleged default on the part of the respondent in paying the requisite instalments. The respondent 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 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 22.01.2020 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 28.08.2024. The petitioner has taken the requisite steps to serve the respondent at its known addresses. The communication/s sent to the said address/es via speed post were returned with the notation, “*Item Returned, Addressee Moved*”, “*Item redirected to Nallosapare E S.O Insufficient Address*” and “*Item Returned Addressee cannot be located.*” whereas the



communications sent via Courier at the various address/es of the respondents returned with the notations “Wrong Address” and “could not locate the address”

It is stated that the respondents have also been served via email at maladresidency@gmail.com.

9. 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 respondent and has thereby discharged its onus to effect service on the respondent.

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

11. 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, *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.

12. Accordingly, Mr. Naman Anand, Advocate (Mob. No.: 91 9988190262) is appointed as the Sole Arbitrator to adjudicate the disputes



between the parties.

13. The respondent 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.

14. 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.

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

16. 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.

17. Needless to say, nothing in this order shall be construed as an expression of opinion 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/gm/sl