



2024 : DHC : 2092



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

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Date of decision: 11th March, 2024

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ARB.P. 79/2024, I.A.1484/2024**M/S SANDHU MOTOR FINANCE PVT LTD**

..... Petitioner

Through: Mr. Sudhir Gupta, Advocate.

versus

SUSHIL KUMAR & ANR.

..... Respondents

Through: Mr. Raj Kumar, Advocate.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. A petition under Section 11(5) of the Arbitration & Conciliation Act, 1996 has been filed on behalf of the petitioner for appointment of the Arbitrator.
2. It is submitted that respondent No.1 took a personal loan for a sum of Rs.5,00,000/- along with interest @ 36% for a period of 15 months from the petitioner. The respondent No.2 is the guarantor and they entered into a Loan Agreement dated 06.12.2018 on the terms and conditions stipulated therein. In discharge of the loan liability, respondent No.1 issued a post dated Cheque bearing No.040920 dated 06.03.2020 for a sum of Rs.7,25,000/- inclusive of interest. After the expiry of the loan period, the Cheque was presented for encashment, but it was dishonoured due to "Insufficient Funds". Demand Notice dated 21.09.2020 was issued to



respondent No.1, but the respondent failed to pay the amount. A Complaint Case under Section 138 N.I. Act has already been filed, which is pending in the Court.

3. A Notice for Invocation of Arbitration was sent on 17.07.2021, in terms of Arbitration Clause 17 of the Loan Agreement. In terms of Notice of Invocation, Ms. Priyanka Agarwal, Advocate was nominated as the Sole Arbitrator to adjudicate the disputes. The learned Sole Arbitrator entered into reference on 13.08.2021 and Statement of Claim was filed by the petitioner. However, the respondent failed to appear despite service and was proceeded ex-parte. Ex-parte Award dated 29.04.2022 was passed by the learned Arbitrator in the sum of Rs.5,00,000/- along with interest @ 36% per annum.

4. An Execution Petition was filed before the learned District Judge (Commercial Court), Delhi vide Execution(COMM)/96/2022 in July, 2022. However, in terms of the judgment of the Supreme Court in Perkins Eastman Architects DPC vs. HSCC (India) Ltd. 2019 (7) SCR 275, the Execution Petition has been dismissed by the Learned District Judge (Commercial Court), holding that the ex-parte Award is a nullity, vide judgment dated 22.09.2023. Hence, the present Arbitration Petition has been filed.

5. Learned counsel for the respondent submits that he has no objection to the appointment of the Arbitrator.

6. **Submissions heard.**

7. Considering that there is a valid Arbitration Agreement between the parties and in the light of the facts and discussions, Ms. Nikita Dewan, Advocate, Mobile No. 9810510044, is hereby appointed as the Sole



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Arbitrator to adjudicate the disputes between the parties.

8. The parties are at liberty to raise their respective objections before the Arbitrator.

9. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996.

10. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule to A&C Act, 1996 or as consented by the parties.

11. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry.

12. A copy of this Order be also forwarded to the learned Arbitrator, for information.

13. The petition is accordingly disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 11, 2024

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