



2024:DHC:9272



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

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Date of Decision : 29.11.2024+ **ARB.P. 1516/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner
Through: Ms. Mehvish Khan, Ms. Arunima
Singh Jadaun, Mr. Aman Choudhary,
Advs.

versus

SAPNA ENTERPRISES THROUGH ITS PROPRIETOR AND ANR
.....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 'the 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 07.10.2019 executed between the petitioner and the respondents, in terms of which the respondent no.1 is a borrower and the proprietor of respondent no.1 and respondent no.2 are co-borrowers.
3. As per the said agreement, the petitioner disbursed a loan of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the respondent. The loan amount was payable in 36 equal instalments of Rs. 74,327/- (Rupees Seventy Four Thousand Three Hundred and Twenty Seven 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 19.02.2022 was issued by the petitioner followed by a demand cum notice for invoking arbitration on 11.06.2024. 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.

8. In the present proceedings, notice was issued by the Court on 27.09.2024. However, since none appeared on behalf of the respondents, a fresh notice was issued by the Court on 12.11.2024. An affidavit of service has been filed by the petitioner on 27.11.2024 wherein it has been brought



out that the petitioner has taken the requisite steps to serve the respondents at its known addresses. The communication/s sent to the said address/es via speed post were returned with the notations, “*Item Returned, Addressee left without instructions*” and “*Item Returned, no such person in the address*” whereas the communications sent *via* Courier at the address/es of the respondents were returned with the notations “*no such person in the given address.*”

9. It is stated that the respondents have also been served *via* email at sapnaenterprises201@gmail.com, gyogender129@gmail.com and dkbopticals@gmail.com and *via* whatsapp at +91-9319212148.

10. 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 respondents and has thereby discharged its onus to effect service on the respondents.

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

12. Since the existence of the arbitration clause is evident from a perusal of the Master Loan Agreement, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***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.

13. Further, in terms of the judgments of the Supreme Court in ***Perkins***



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Eastman Architects DPC v. HSCC (India) Ltd (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

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

15. 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.

16. 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.

17. 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).

18. 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.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 29, 2024/sl