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

+ **ARB.P. 366/2025**

KOTAK MAHINDRA PRIME LIMITEDPetitioner

Through: Mr. Ajay Uppal, Advocate

versus

UPAL BUILDTECH PVT LTD & ANR.Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **25.03.2025**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of an Arbitrator in terms of the Loan Agreement dated 31.08.2016 executed between the parties. It is stated that the said Loan Agreement contains an Arbitration Agreement at Clause 31, which reads as under:

“31. Arbitration:

All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the arbitration of a sole arbitrator to be nominated by the LENDER. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the LENDER may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be conducted in English language and held at the place more particularly mentioned in the SCHEDULE-I of the present a agreement hereunder.”



(Emphasis supplied)

2. Schedule I of the agreement records that the place of the execution of the agreement is Delhi.

3. It is stated that the Respondents approached the Petitioner Company, seeking grant of vehicle loan and hypothecation financing facility. It is stated that the Petitioner Company granted to the Respondents a loan of Rs. 23.50 Lakhs for a period of 60 months vide Loan Agreement dated 31.08.2016. It is stated that as per the terms of the agreement the Respondents had to repay the loan amount in 60 Equated Monthly Installments (EMIs) of Rs. 49,584 each.

3.1. It is stated that the Respondents failed to adhere to the terms of the repayment as set out in the Loan Agreement dated 31.08.2016. It is stated that thereafter, the Petitioner issued loan recall cum demand notice and notice for invocation of Arbitration on 20.11.2024.

3.2. It is stated that earlier the Petitioner appointed Sole Arbitrator in the year 2018 and an award was passed by the said Arbitrator on 25.03.2019.

3.3. It is stated that Respondents are jointly and severally liable to pay a sum of Rs. 25,59,806/- towards principal, interest and penal interest and other charges dues as on 20.11.2024.

3.4. It is stated that as per the agreement and the Arbitration Clause therein, arbitration proceedings were agreed to be held in Delhi.

Arguments of the Petitioner

4. Learned Counsel for the Petitioner states that the service in this petition on the Respondents has been duly affected and the affidavit of service has also been filed. He states that Respondent no. 1 and Respondent no. 2 have both been duly served through e-mail. He states that the e-mail



address is duly reflected in the Master Data of Respondent no. 1 derived from the website of Ministry of Corporate Affairs. He states that the e-mail used in service is also the personal e-mail of Respondent No. 2. He states service by e-mail is on 19.03.2025. He states that Respondent No. 2 has been served through speed-post on 21.03.2025.

4.1. He states that the quantum of amount, which is subject matter of the dispute is approximately Rs. 25 Lakhs i.e., the amount, which was outstanding as on the date of filing of the petition.

4.2. He states that the arbitration may be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and an Advocate be appointed as an Arbitrator considering the value of the claim amount involved.

Decision

5. Notice in the present petition was issued on 25.02.2025 and the Respondents were directed to file their reply, which has not been filed. Due service on the Respondents by the registry through e-mail is duly reflected in the office noting dated 25.03.2025. However, none has appeared on behalf of the Respondents today as well.

6. Upon perusal of the Loan Agreement and Schedule I thereto, this Court is satisfied that the said agreement has been executed at Delhi between the parties.

7. A perusal of Clause 31 of the Loan Agreement shows that there exists an arbitration agreement between the parties and the said clause has been duly invoked by the Petitioner by issuing notice invoking arbitration dated 20.11.2024. The loan agreement bears e-stamp of GNCTD.

8. In view of the aforesaid submission, considering the fact that the arbitration agreement forms part of the Loan Agreement and it is mentioned



in the said arbitration agreement that a Sole Arbitrator is to be appointed for adjudication of the disputes, therefore, the present petition is allowed with the following directions:

- (i) Mr./Ms. Devika Mohan, Advocate [Mobile No.: 9560044698, Email ID: devika@devikamohan.co.in, Enrolment No. D 2549/2013] is appointed a Sole Arbitrator.
- (ii) The arbitration will be held under the aegis of the DIAC. The remuneration of the learned Sole Arbitrator shall be in terms of the Schedule IV of the Act of 1996.
- (iii) The learned Sole Arbitrator is requested to furnish a declaration in terms of the Section 12 of the Act of 1996 before entering into the reference.
- (iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Sole Arbitrator.

9. Learned counsel for the Petitioner states that the statement of the claim be duly filed within four (4) weeks.

10. List for preliminary hearing to be presided over by the learned Sole Arbitrator on **13.05.2025** at **10:30 AM**

11. The DIAC is directed to issue fresh notice to the Respondents for the hearing dated **13.05.2025**.

12. With the aforesaid direction, the petition stands disposed of.

13. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and the learned Sole Arbitrator.

14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated



as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MARCH 25, 2025/mt/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any