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

+ **ARB.P. 612/2024**

INDIABULLS HOUSING FINANCE LTD.Petitioner

Through: Mr. Sagar Chaurasia and Mr. Raghav
Khanna, Advocates.

versus

V SARAVANAN AND ANR.Respondents

Through: None.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER

26.05.2025

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1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. Notice was issued in the petition on 17.05.2024 to the Respondents, returnable on 30.08.2024. On 04.03.2025, Court noted the submission of the counsel for the Petitioner that Respondents were served through publication and time was given to file affidavit of service to this effect. When the matter was listed on 29.04.2025, affidavit of service was on record, wherein it was stated that publication was carried out by the Petitioner in two newspapers i.e., 'The Hindu' in English and 'Daily Thanthi' in regional language, Chennai Edition on 25.02.2025 and 26.02.2025. Copies of the newspaper publications were appended to the affidavit. There was no appearance on



behalf of the Respondents despite the matter being called twice and in the interest of justice, adverse order was deferred, making it clear that if Respondents were unrepresented on the next date, Court will proceed to hear the matter in their absence. On 23.05.2025, again there was no appearance on behalf of the Respondents and the matter was renotified for today.

3. This is the second call of the matter. None appeared on behalf of the Respondents on the first call and none appears on the second call. Accordingly, Respondents are set *ex parte*.

4. Disputes raised in the present petition emanate from Loan Agreement dated 30.07.2014, executed between the Petitioner and Respondents, under which Petitioner had disbursed a loan of amount of Rs. 17,91,134/- to the Respondents for purchase of residential property being Apartment No. E4, 506, Fifth Floor, Block- E4, Purva Windermere Thiruvalluvar Salai Medavakkam Village and Pallikaranai Village Tambaram, Taluk & District Kanchipuram, Tamil Nadu. M/s Puravankara Projects Ltd. became the guarantor to the Loan Agreement and executed a Tripartite Deed of Guarantee dated 01.08.2014 with Respondent No. 1 and the Petitioner.

5. It is averred in the petition that in and around August, 2018, Respondents started defaulting in making the payments of EMIs and as per Deed of Guarantee, Petitioner recalled the loan facility on 04.09.2018. Thereafter, the guarantor cancelled the Agreement of Sale executed with Respondent No. 1 and made a payment of Rs. 15,96,541/- to the Petitioner towards part payment of the loan amount. Petitioner called upon the Respondents to pay the outstanding amount of Rs. 5,67,674/- by demand notice dated 22.11.2023 and by a letter dated 23.12.2023 invoked the Arbitration Clause in the Loan Agreement and appointed a Sole Arbitrator.



6. It is further stated that the learned Arbitrator terminated the arbitral proceedings on 25.01.2024 on the ground that the appointment was unilateral and thus in contravention of Section 12(5) read with Seventh Schedule of 1996 Act in light of judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd., (2020) 20 SCC 760.***

7. Thereafter, Petitioner again invoked Arbitration Clause i.e., Article 11 of the Loan Agreement vide notice dated 02.02.2024 and proposed the names of the Arbitrator from a list of independent Arbitrators. Notice was sent by registered post on the addresses of the Respondents available in the Loan Agreement but the same came back unserved.

8. Learned counsel for the Petitioner submits that Respondents have defaulted in repayment of the balance loan amount disbursed to the Respondents under a duly executed Loan Agreement. Since an Arbitration Agreement exists between the parties and invocation notice dated 02.02.2024 on the Respondents, there is failure to appoint an Arbitrator and Court may appoint a Sole Arbitrator. It is also urged that the notice was sent through registered post on the last known address of the Respondents available on the Loan Agreement and no further steps are required to be taken by the Petitioner in terms of Section 3 of 1996 Act.

9. Heard counsel for the Petitioner.

10. The Loan Agreement dated 30.07.2014 executed between the Petitioner and the Respondents contains an Arbitration Clause, which is extracted hereunder for ready reference:-

“ARTICLE 11: ARBITRATION That the Borrower and IHFL agree that agreement shall be construed in accordance with the laws in force in India and in the event that any dispute or difference should arise on any matter



relating to or arising out of the present agreement the same shall be referred to the Sote Arbitration of an arbitrator to be appointed by IHFL whose decision shall be final and binding upon the parties. The sole Arbitrator shall conduct the arbitration proceedings at New Delhi/Delhi. It is also mutually agreed between the parties that IHFL would be entitled to invoke the present arbitration agreement even after IHFL would have recalled the Loan/terminated the contract for any reason whatsoever. It is also agreed between the parties that arbitration proceeding would be conducted in English only and in no other language.”

11. Petitioner sent a notice dated 02.02.2024 to the Respondents by registered post on the last available address in the Loan Agreement under Section 21 of 1996 Act invoking the Arbitration Clause. The notice came back unserved. Section 3(1)(a) of 1996 Act provides that unless otherwise agreed by the parties, any written communication is deemed to have been served if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address. Section 3(1)(b) of 1996 Act provides that if none of the places referred to in clause (a) can be found after making a reasonable enquiry, written communication is deemed to have been received if it is sent to addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it. Petitioner sent the invocation notice on the last known addresses of the Respondents as available on the Loan Agreement and by virtue of Section 3 of 1996 Act, the same will be deemed to have been received by the Respondents.

12. In fact, Respondents have been evading appearing even before this Court. Despite publication, none appeared on 29.04.2025, when the matter was adjourned in the interest of justice. There was again no appearance on 23.05.2025 and none has appeared even today. Counsel for the Petitioner is right in his submissions that on account of failure of the Respondents to



agree upon a Sole Arbitrator, Court should proceed to appoint the Arbitrator.

13. Accordingly, this petition is allowed. Learned Coordinator, Delhi International Arbitration Centre ('DIAC') is requested to take steps for appointment of a Sole Arbitrator to adjudicate the disputes emanating out of the Loan Agreement. Arbitral proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

14. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

15. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

16. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 26, 2025

S.Sharma