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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 681/2024 & I.A. 11052/2025**
CAPITAL TRADE LINKS LIMITEDPetitioner

Through: Ms. Kusum Pandey, Adv.

versus

PRATIK KUMAR MALVIYARespondent

Through: Mr. CSS Tomar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **18.07.2025**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the Act") seeking appointment of an arbitrator to adjudicate the disputes between the parties arising out of an Agreement to Sell dated 10.04.2015 ("the ATS").
2. The brief facts of the case as per the petitioner are that the petitioner in April, 2015 had advanced a loan of Rs.49,50,000/- to the respondent.
3. The respondent, upon receipt of the loan amount through RTGS, executed the ATS with respect to his rights in the properties, being freehold residential plot situated in Khasra No. 333, Village Shahpur, Pargana Jalalabad, Tehsil and District Ghaziabad, U.P. (measuring 850 sq. mtrs.) and Khasra No. 806, Village Morti, Pargana Jalalabad, Tehsil and District Ghaziabad, U.P. (ad measuring 998 sq. mtrs.).
4. It was agreed between the parties that the entire loan amount is to be paid within a period of 12 months from 11.04.2015 to 11.03.2016. In case of default, the petitioner will get the title documents of the aforesaid 2 properties executed in its favour.



5. Since the respondent was not regular with the repayment of the loan amount, the petitioner extended the time for repayment and a new repayment schedule along with addendum to the ATS was signed by the respondent on 05.04.2016.
6. Subsequently, the respondent again failed with the repayment of the loan amount and requested the petitioner to further extend the loan repayment period.
7. The petitioner company extended the loan repayment loan period upto 05.03.2018 and again prepared a new repayment schedule.
8. Even after the second extension, the respondent did not pay the loan amount and hence, the petitioner invoked the arbitration clause, being Clause 16 of the ATS. Clause 16 reads as under:-

“16. Any conflict, difference, controversies, or disputes arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, if any, shall be submitted/referred to the arbitration of the Sole Arbitrator. Sole Arbitrator shall be nominated/appointed by Second Party i.e. Capital Trade Links Limited & Endless Services Private Limited. The Arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act 1996 and Rules thereunder, any amendments thereto and the language of the Arbitration shall be English. The arbitration proceedings shall be carried out at Delhi. The decision/award of the Arbitrator shall be final/conclusive and binding on the parties. The venue of Arbitration shall be at New Delhi.”

9. Thereafter, the petitioner appointed Mr. Mukesh Kaushik as the sole



arbitrator to adjudicate the disputes between the parties.

10. The arbitration was proceeded *ex parte* and the appointed arbitrator passed an *ex parte* award on 17.07.2018, directing the respondent to execute the sale deed of the said 2 properties in favour of the petitioner.
11. The respondent challenged the award by filing a petition under Section 34 of the Act before the District Judge (Commercial Court-01), Shahdara, Karkardooma, Delhi in OMP (COMM.) 14/2020. *Vide* the order dated 01.04.2023 passed by the learned District Judge, the objections filed by the respondent were allowed.
12. The operative paragraphs of the said Order reads as under:-

“21. The second contention of the 1d. Counsel for the applicant/ petitioner has remained that the loan amount of Rs.49,50,000/- was taken by the petitioner from the respondent No.1, on 02.04.2015 and till March, 2017, the petitioner/ applicant had already paid an amount of Rs.47,01,344/- to the respondent No.1 and this fact was never disclosed by the respondent No.1 in his statement of claim, which was instituted by the respondent No.1, against the applicant/petitioner, before the Ld. Arbitrator in February, 2018. He has further argued that by concealing this fact, the respondent No.1, in collusion and conspiracy with respondent No.2, has obtained an exparte award from the Ld. Arbitrator (respondent No.2), on 17.07.2018. The Ld. Counsel for the petitioner/applicant has also filed his written arguments, alongwith copies of some judgments, in support of his contentions.



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35. During the course of the arguments, the second contention of the Ld. Counsel for the petitioner has remained that the applicant had already paid an amount of Rs.47,01,344/- till the month of March, 2017 and this fact was concealed by the respondent No.1, while filing his statement of claim before the Ld. Arbitrator and he obtained the arbitration award dated 17.07.2018, by concealing the aforesaid facts.

36. Perusal of the arbitration award and the arbitration record clearly indicates that the respondent No.1 has concealed the fact of receiving the payment of Rs.47,01,344/- from the applicant/petitioner, till March, 2017. However, during the arguments, the Ld. Counsel for the respondent No.1 has relied upon the letter of the petitioner dated 01 .03.2017, Ex.CW1/9, and has argued that vide said letter dated 17.04.2017, the applicant/ petitioner has admitted his liability and has confirmed that as on 01.03.2017, an amount of Rs.20,31,335/- was due and outstanding against his loan account.

...

39. Perusal of the claim/petition filed by the respondent No.1 indicates that the respondent No.1 has mentioned in the claim/ petition that a loan of Rs.49,5000/- was granted by the respondent No. to the applicant/petitioner, on 02.04.2015 and the said payment with interest was not made by the applicant/ petitioner. It has been specifically mentioned in the claim that



despite second extension of the loan agreement, the applicant was neither paying its dues nor coming forward to fulfill his commitment of executing the sale deed in favour of the respondent No.1.

40. *Perusal of the claim/petition further shows that there is no mentioning of the fact that the respondent No.1 had already received a payment of Rs.47,01,344/- from the applicant/petitioner, even prior to the institution of the claim petition, before the Ld. Arbitrator.*

41. *The arbitration award, dated 17.07.2018, also indicates that even during the arbitration proceedings no such intimation was given by the respondent No.1 to the Ld. Arbitrator and the fact of repayment of Rs.47,01,344/- was concealed during the entire arbitration proceedings, till the passing of the order dated 17.07.2018. The relevant paras of the arbitration award dated 17.07.2018 are reproduced below: ...*

42. *From the circumstances of the case and the material on record, it is clear that the respondent No. 1 has obtained the award dated 17.07.2018, from the Ld. Arbitrator, by concealing the aforesaid material facts of payments, from the Ld. Arbitrator. Therefore, the present application/ petition is hereby allowed and the arbitration award dated 17.07.2018 is hereby set-aside, as the same has been obtained by the respondent, by playing fraud on the Ld. Arbitrator.”*

13. A perusal of the said Order clearly shows that the learned District Judge



was of the view that the respondent had repaid an amount of Rs.47,01,344/- and the award dated 17.07.2018 was obtained by concealment regarding the payments made by the respondent.

14. Hence, the award dated 17.07.2018, which mandated the respondent to execute the title documents with regard to the said properties, was set aside.
15. Hence, the present petition.
16. Herein, the notice under Section 21 of the Act, invoking arbitration, dated 30.05.2023, shows that the petitioner is seeking the same claims which have already been adjudicated upon in the petition filed under Section 34 of the Act.
17. The relevant paragraphs of the said notice reads as under:-

“5. That against the said Award, you the Addressee preferred an Appeal under Section 34 of The Arbitration and Conciliation Act. The said Appeal was allowed by the Hon'ble Court of Sh. Brijesh Kumar Garg, District Judge (Commercial court), Karkardooma.

6. That even after all the proceedings and the fact of non-payment of regular EMIs and the total outstanding amount against the loan obtained by you the Addressee, you miserably failed to honor your commitments as per the terms and conditions of the above mentioned Agreement to Sell. Because of non-payment of EMIs, the total outstanding amount as on date accumulated to the extent of Rs. 2,54,67,6181-, (Rupees Two Crore Fifty-Four Lacs Sixty-Seven Thousand Six Hundred Eighteen Only) which you



the Addressee is liable to pay to our client along with future interest till the date of payment.

7. *That in failure of making the payment of outstanding amount, you the Addressee is liable to come forward to repay the total outstanding amount of Rs. 2,54,67,6181- as on date and/or to appear before the office of Sub Registrar- II, Ghaziabad, U.P for registration of Sale Deed with regard to the property bearing no. Khasra No. 333, Village Shahpur, Pargana Jalalabad, Tell. & Distt. Ghaziabad, U. P.*

8. *That in view of the above, our client is exercising its right for Re-invoking the Arbitration, as per Clause No. 16 of the Agreement To Sell dated 10.04.2015, duly executed between our client and you the Addressee, to appoint an Arbitrator for adjudication of the dispute between you the Addressee and our Client arising out of the agreed tem1s and conditions of the said Agreement to sell, our Client have appointed **Mr. Naveen Bhardwaj, Advocate, Office at C16, Vijay Lakshmi Apartment, Plot no 98, IP Extension, Delhi 110092** as Sole Arbitrator to adjudicate the disputes arisen between you and our Client and referred the same to him for adjudication. Mr. Naveen Bhardwaj, has consented to enter the reference of arbitration and adjudicate upon the dispute existing between you and our Client as per provisions of Arbitration and Conciliation Act, 1996 and will send you the relevant notice, summon or information in due comse as per law and procedure.”*



18. To note, the averments in the said notice show that the repayment of the loan amount to the tune of Rs. 47 lakhs has neither been mentioned nor adverted to.
19. On perusal, I am of the view that the issue in controversy that whether the respondent has made payment of the loan amount and whether the respondent is liable to transfer the properties, being Khasra No. 333, Village Shahpur, Pargana Jalalabad, Tehsil and District Ghaziabad, U.P. (measuring 850 sq. mtrs.) and Khasra No. 806, Village Morti, Pargana Jalalabad, Tehsil and District Ghaziabad, U.P. (ad measuring 998 sq. mtrs.), to the petitioner has already been adjudicated upon by the learned District Judge.
20. It is pertinent to note that the Order dated 01.04.2023 has neither been challenged by the petitioner nor set aside, varied or modified and thus, has attained finality. Once the findings have attained finality, the same cannot be re-litigated in view of the principles of *res judicata*.
21. At this stage, Ms. Pandey, learned counsel for the petitioner, states that she will challenge the Order dated 01.04.2023 passed by the learned District Judge.
22. As and when the same is done, the same shall be adjudicated upon by the competent Court in accordance with law.
23. For the said reasons, there is no merit in the present petition and hence, the same is dismissed.
24. The petition is disposed of accordingly.

JASMEET SINGH, J

JULY 18, 2025/ss