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

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Date of decision: 21st May, 2025+ **ARB.P. 717/2024****M/S INDIABULLS HOUSING FINANCE LTD.Petitioner****Through: Mr.Raghav Khanna and Mr. Sagar
Chaurasia, Advocates.****versus****JAGDISH SINGH NEGI AND ANR****.....Respondents****Through: None.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

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. Disputes in the present petition emanate out of a Loan Agreement dated 25.06.2018 executed between the Petitioner and Respondents, pursuant to which Petitioner disbursed a loan of Rs.26,06,053/- to the Respondents for purchase of residential property bearing No. Plot No. C-143, Second floor, Rectangle No-17, Killa No-14, Jeewan Park, Pankha Road, New Delhi, whereunder EMIs were payable w.e.f. 10.07.2018. Respondents, however, started defaulting in making the requisite payments and loan was recalled. Notice was issued to the Petitioner on 13.09.2021



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under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The mortgaged property was auctioned and sold for an amount of Rs. 20,61,000/-, and Sale Certificate dated 09.02.2023 was also issued in this regard. However, since the complete claims of the Petitioner were not satisfied and there was an Arbitration Clause 14 in the agreement between the parties, Petitioner issued an invocation notice dated 03.02.2024 after the earlier arbitral proceedings commenced at the instance of the Respondents were terminated, being in contravention of Section 12(5) of the 1996 Act in view of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760***.

3. Learned counsel for the Petitioner submits that the invocation notice was sent at B-17, Lawrance Road, Industrial Area, New Delhi and Flat No. 65-I, Ground Floor, Suruchi Apartment, Plot No. 31, Sector 10, Dwarka, New Delhi, the last known addresses of the Respondents as mentioned in the Loan Agreement. It is urged that it is on these addresses that communications were earlier sent by the Petitioner and received by the Respondents, however, invocation notices came back undelivered. Petitioner is not aware of any other address of the Respondents. It is also urged that invocation notice was also sent by e-mail on the last known e-mail IDs of the Respondents, but the same bounced. This, according to the counsel, cannot be an impediment in appointing an Arbitrator inasmuch as Section 3 of 1996 Act provides that if any written communication is sent to an addressee personally or at his place of business, habitual residence address or mailing address but none of the said places are found after making a reasonable enquiry, written communication is deemed to have been received



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if sent to the addressee's last known place of business, habitual residence address or mailing address by a registered letter or by any means, which provide a record of an attempt to deliver and in support, places reliance on the judgement of this Court in ***G4S Secure Solutions (India) Private Limited v. LI Consulting Private Limited, 2021 SCC OnLine Del 4146.***

4. It is further submitted that there is a clear attempt by the Respondents to evade the delivery of invocation notice under Section 21 of 1996 Act by moving out from the properties bearing the addresses, which were part of the Loan Agreement as also by changing the e-mail IDs. This *mala fide* attempt is further substantiated by the fact that even before this Court, Respondents have evaded service of notices through various modes and have chosen not to appear despite substituted service by publication in two newspapers.

5. Heard learned counsel for the Petitioner.

6. Notice was issued in this petition on 21.05.2024, returnable on 10.09.2024, on which date counsel for the Petitioner sought time to move an application for effecting substituted service. By order dated 22.10.2024, Court allowed I.A. 40296/2024 being an application under Order V Rule 20 of CPC, 1908 and directed the Petitioner to serve the Respondents by publication in two newspapers, one being an English and the other in Hindi having wide circulation in the concerned area. Order dated 16.04.2025 passed by learned Joint Registrar (Judicial) reflects that Petitioner carried out substituted service by publication of citations in newspapers "*Navbharat Times*" and "*Times of India*". It was recorded in the order that Respondents did not appear despite service and accordingly, the right to file reply was closed and matter was placed before Court.

7. The disputes *inter se* the parties herein emanate out of a Loan



Agreement dated 25.06.2018, which contains an Arbitration Clause 14, which reads as follows:-

“ARTICLE 14: ARBITRATION

This Loan Documents is/ shall be governed by Indian laws and courts at New Delhi shall have exclusive jurisdiction relating to any matter/ issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary. If any dispute/ disagreement/ differences (“Dispute”) arise between the Parties (including any Borrower(s)) during the subsistence of the Loan Documents and/ or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/ or alleged breach of any provision of the Loan Documents, jurisdiction or existence/ appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by IHFL only. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means of securing the appointment/ nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by Arbitration & Conciliation Act, 1996 (or any statutory reenactment thereof, for the time being in force) and shall be in English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law.”

8. Disputes having arisen, Petitioner invoked the Arbitration Clause and sent a notice dated 22.03.2024 to the Respondents proposing a list of independent Arbitrators through registered posts on the same day at the addresses provided by the Respondents in the Loan Agreement as also on the last known e-mail IDs. The notices were not served as candidly admitted by the Petitioner. In my view, learned counsel is right in his submission that in view of Section 3 of 1996 Act, once the notices were sent through various modes on the Respondents’ last known addresses mentioned in the Loan Agreement through Speed Post as also through electronic mode on the last known e-mail IDs, which provide a record of an attempt to deliver, the notice is deemed to have been received. In this context, I may refer to



passages from the judgment of this Court in **G4S Secure Solutions (supra)** as follows:-

“21. It is clear from the express language of Section 3 of the A&C Act that any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence address or mailing address. However, if none of the said places is found after making a reasonable inquiry, written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by a registered letter or by any means, which provide a record of an attempt to deliver.

22. In the present case, it is established that an attempt to deliver the notice dated 24-9-2018 was made at the petitioner's address at 803, Ansal Bhawan, 16 KG Marg, New Delhi 110 001.

23. Even if it is accepted that the notice was not received by the petitioner at its registered office, it is established that an attempt to deliver was made at the address on which the notices were agreed to be delivered by the parties, in terms of the contract.

24. In Shabnam Gulati v. Religare Finvest (P) Ltd. [Shabnam Gulati v. Religare Finvest (P) Ltd. 2017 SCC OnLine Del 11656] , this Court had explained the effect of Section 3 of the Act as under:

“18. Section 3(1) of the Arbitration and Conciliation Act, specifically states that a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual address or mailing address by registered letter or by any other means which provides a record of ‘attempt to deliver it’. Therefore, unlike sub-rule (5) of Rule 9 of Order 5CPC requiring proof of acknowledgment or any other receipt of due delivery of the summons, or drawing of a presumption of due service only where the summons were properly addressed but the acknowledgement was lost or misled or for any other reason was not received by the court, under the Arbitration and Conciliation Act sending of notice by registered letter or by other means at last known place of business, habitual residence or mailing address which provides the record of ‘attempt to deliver it’.”

25. In view of the above, the contention that the present petition is not maintainable for want of notice under Section 21 of the A&C Act, cannot be accepted.”

9. There is also substance in the contention that Respondents are evading appearance even before this Court and have chosen to remain absent despite



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being served through publication. Since there is an Arbitration Clause in the Loan Agreement, whereby parties intended to refer the disputes arising out of the Loan Agreement to a Sole Arbitrator, there is no impediment in allowing this petition.

10. Accordingly, Coordinator, Delhi International Arbitration Centre ('DIAC') is requested to appoint a Sole Arbitrator to adjudicate the disputes between the parties. 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.

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

12. 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.

13. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 21, 2025/shivam