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

+ **ARB.P. 856/2023**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner

Through: Ms. Mehvish Khan, Adv and Mr.
Aman Choudhary, Advs.

versus

ALPHA PATH LAB AND ORS

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

24.02.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('**A&C Act**'), seeking appointment of the Sole Arbitrator for the adjudication of disputes between the parties arising out of the '*Loan Agreement*' dated 05th November 2019, executed between the parties.

2. It is stated that the arbitration clause is contained in *Clause 10.1* of the said agreement of the seat of Arbitration being Delhi. The arbitration clause reads as under:

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.



3. Petitioner is a Non-Banking Financial Company ('NBFC'), which had given a loan to respondent no.1 with respondent nos. 2-3 being the co-applicants.
4. Notices have been served to respondent nos. 1 and 3 by way of publication as noted in the order of Joint Registrar (Judicial) dated 13th September 2024.
5. Respondent No.2 has been served on 04th May 2024. No response has been filed. However, no one appears on behalf of respondents.
6. Since there were disputes between the parties, petitioner invoked arbitration *vide* notice dated 24th April 2023, which was not responded to by respondent.
7. Counsel for petitioner states that dues of respondents, as of today, are *estimated at Rs. 25 lacs*.
8. It is stated that despite petitioner's request, the respondents did not consent to the appointment of the Sole Arbitrator, as per the aforementioned Clause.
9. The Supreme Court in ***Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.***(2012) 10 SCC 752 and ***Suprema Inc. v. 4G Identity Solutions (P) Ltd.*** (2015) 13 SCC 122, and this Court in, ***Energy Efficient Services Ltd. v. Merry Gold Enterprises*** 2023 SCC OnLine Del 2365 and ***Aditya Birla Finance Ltd. v. Anjali Nag*** 2024 SCC OnLine Del 2568, in similar situations, where the respondents did not appear before the Courts despite issuance of notice and service being affected upon them, proceeded *ex-parte* against such respondents and appointed the arbitrator.
10. Upon a conspectus of the averments contained in the petition and the submissions made, this Court is of the opinion that there is a valid and



subsisting arbitration agreement between the parties, within the territorial jurisdiction of this Court, the disputes stated to have arisen between the parties do not appear *ex facie* to be non-arbitrable.

11. Considering the aforesaid, the petition is allowed. The following directions are issued:

- i) *Ms. Pavitra Kaur*, Advocate (Mob. No. 9811999292) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi ('**DIAC**'). The remuneration of the Arbitrator shall be as per DIAC rules.
- iii) The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including the arbitrability/maintainability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute by either of the parties are left open for adjudication by the Sole Arbitrator.
- v) The parties shall approach the Sole Arbitrator within two weeks from today.

12. The petition is disposed of.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 24, 2025/RK/bp