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

+ ARB.P. 818/2024

M/S INDIABULLS HOUSING FINANCE LTD.Petitioner

Through:

versus

MR. KUNWAR PAL SINGH AND ANR.Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **24.03.2025**

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 Loan Agreement dated 23.01.2021 (*"the Agreement"*).
2. The brief facts of the case are that the parties executed the Agreement pursuant to which the petitioner disbursed a loan amount of Rs.17,77,400/- to the respondents against the equitable mortgage of property situated at Prop. No.226 (Northern Part), 3rd Floor with Roof Rights, Old Prop No.1438-P-20-E-1, Plot No. 2, Khasra No.972-109, Village Sikdarpur, Balbir Nagar Extension, Shahdara, Khasra No.972/109, New Delhi-110032, Delhi.
3. The respondents started defaulting in making the requisite payments of the EMI owing to which the loan was recalled and notice dated 19.07.2022 as per Section 13(2) of the SARFAESI Act, 2002, was issued to the respondents by the petitioner.
4. Consequently, the said property was auctioned and sold for an amount



of Rs.13,51,000/- and a sale certificate dated 24.06.2023 was issued in this regard.

5. However, there is an outstanding amount of Rs.5,58,470/-, for which the petitioner invoked arbitration *vide* Demand Notice dated 22.11.2023.
6. Subsequently, the petitioner appointed an Arbitrator *vide* Letter dated 23.12.2023.
7. On 25.01.2024, the learned Arbitrator terminated the arbitral proceedings on the ground that unilateral appointment and constitution of the Arbitral Tribunal by the petitioner was in contravention with Section 12(5) read with Schedule VII of the Act, as per the judgment of ***Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd., (2020) 20 SCC 760.***
8. Thereafter, on 03.02.2024, the petitioner issued a fresh notice invoking arbitration under Article 23 of the Agreement, which reads as under:

“23. The Loan Documents is/shall be governed by Indian laws and the courts at New Delhi shall have exclusive jurisdiction relating to any matter/issue under or pursuant to the Loan Documents. Provided that such exclusivity shall not bind the Lender and the Lender shall be entitled to initiate proceedings in relation to the Loan Documents before any competent forum. Notwithstanding anything to the contrary,

(a) if any dispute/disagreement/differences ("Dispute") arise between the Parties (including any Obligor(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 the Lender only. It is expressly agreed that in any circumstance, the appointment of the sole arbitrator as aforesaid shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The seat of the arbitration shall be New Delhi and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof; for the time being in force) and shall be in the 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;

(b) the Lender shall, however, be entitled to initiate action and/or proceed under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (including any statutory modification, amendment or re-enactment thereof for the time being in force and as may be enacted from time to time) and rules made thereunder, if applicable.”

9. In the present case, since the loan amount is in excess of the amount recovered from the SARFAESI proceedings, I am of the view that the present petition is maintainable.
10. *Vide* the Order dated 20.02.2025 passed by a co-ordinate bench of this Court, it is stated that the reply was filed, however, the same is not on



record.

11. Additionally, there is nobody appearing on behalf of the respondents in the first call as well as in the second call.
12. In view of the matter, I am satisfied that there is an arbitration clause and *prima-facie*, there are amounts due and payable to the petitioner by the respondents and there exists disputes between the parties in this regard.
13. For the said reasons, the petition is allowed and the following directions are issued :-
 - i. Ms. Mehvish Khan, Adv. (Mob. No. 9319212148) 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”).
 - iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.



- vi. The parties shall approach the learned Arbitrator within two weeks from today.
14. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 24, 2025/sp

Click here to check corrigendum, if any