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

\+ O.M.P.(I) (COMM.) 414/2023 & I.A. 25421/2023

L AND T FINANCE LIMITED .....Petitioner

Through: Mr. Shahrukh Inam and Ms. Usha Singh, Advocates.

versus

TANUJ KUMAR GARG & ORS. .....Respondents

Through: Mr. Anil Panwar, Mr. Tanishq Panwar and Mr. Aman Qayoom Wani, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **29.04.2025**

<u>I.A. 25423/2023</u> *<u>(u/S 151 of CPC, 1908)</u>*

1. This application is preferred on behalf of the Petitioner seeking condonation of delay of 31 days in re-filing the present petition.

2. Issue notice.

3. Mr. Anil Panwar, learned counsel accepts notice on behalf of the Respondents.

4. For the reasons stated in the application, the same is allowed. Delay of 31 days in re-filing the petition stands condoned.

5. Application stands disposed of.

<u>O.M.P.(I) (COMM.) 414/2023</u>

6. This petition is preferred on behalf of the Petitioner under Section 9 of Arbitration and Conciliation Act, 1996 ('1996 Act') for restraining the Respondents from selling, alienating or creating third party rights in residential property bearing Plot No. N.K.-II/519, admeasuring 292.61 sq.

meters, situated at Niti Khand-2, Indirapuram, Tehsil and District, Ghaziabad, Uttar Pradesh and/or dealing with it in any manner. Same relief is sought to two other properties mentioned in prayer clause (b) of the petition.

7. Issue notice.

8. Mr. Anil Panwar, learned counsel accepts notice on behalf of the Respondents.

9. Case of the Petitioner is that Respondents No. 1 to 3 approached the Petitioner in the year 2023 for sanction of Credit Facilities in the form of home loan for a sum of Rs. 3 crores to purchase a property at Indirapuram, Ghaziabad, aforementioned, on a representation that erstwhile owner and Respondents had executed an Agreement to Sell dated 22.02.2023 for sale/purchase of the mortgaged property and that the erstwhile owner was the absolute owner of the said property. Accordingly, loan documents were executed by Respondent No. 1 in favour of the Petitioner and parties further entered into a Loan Agreement dated 29.03.2023 whereby Petitioner agreed to advance loan of Rs. 3 crores at fixed rate of interest of 8.70% per annum. The loan amount was to be repaid in 240 monthly instalments and in order to secure the amount, Respondents No. 1 to 3 executed several security documents, such as Promissory Note, Indemnity Bond etc. This petition was filed when Petitioner learned that in collusion with erstwhile owner, Respondents had committed fraud by misrepresenting and fabricating title documents to induce the Petitioner to disburse the Loan Facility. Petitioner is also stated to have filed a criminal complaint. As per the Petitioner, as on 27.09.2023, the sum of Rs. 2,50,93,266.93/- is due to the Petitioner along with interest and other charges from the Respondents.

10. Learned counsel for the Petitioner submits that Clause 12 of the Loan Agreement dated 29.03.2023 provides for reference of disputes arising between the parties to arbitration and therefore, the Sole Arbitrator be appointed by this Court in this petition so that the Arbitrator can commence the arbitral proceedings and Petitioner will file an appropriate application for interim relief before the learned Arbitrator.

11. Learned counsel appearing on behalf of the Respondents, basis the reply filed on behalf of the Respondents, submits that while the Arbitration Clause is not disputed in the Loan Agreement dated 29.03.2023, however, Respondents seriously dispute the execution of the documents between the parties, as alleged by the Petitioner. It is incorrect for the Petitioner to state that Respondents fabricated documents to misrepresent the ownership of the mortgaged property and induced the Petitioner to advance the loan. The correct fact is that Respondents were forced and compelled to sign numerous blank documents on 29.03.2023 by the officials of the Petitioner under the garb of sanctioning the loan. For ascertaining the title of the property in question, Respondents opted to mortgage the property in question and also verified the documents before sanctioning the loan and in fact, Petitioner itself issue Bankers Cheque in the name of previous owner only because the Title Deeds were verified and found to be correct. Therefore, it cannot be alleged that Respondents are guilty of fraud of fabrication. In a nutshell, the argument is that since Respondents were made to sign on blank documents and their execution is disputed as also because cross-FIRs are pending, reference be not made to arbitration.

12. Heard learned counsels for the parties.

13. Having perused the reply filed by the Respondent and on the basis of

arguments addressed, case of the Respondents is that looking at the nature of the disputes, which border on fraud, the disputes are non-arbitrable. The Supreme Court in ***Avitel Post Studioz Limited and Others v. HSBC PI Holdings (Mauritius) Limited, (2021) 4 SCC 713*** held that 'serious allegations of fraud' arise if either of the two tests laid down are satisfied i.e., (a) when it can be said that the Arbitration Clause or the Agreement itself cannot be said to exist in a clear case in which the Court finds that the party against whom breach is alleged cannot be said to have entered into the Agreement at all or; (b) where allegations are made against the State or its instrumentalities of arbitrary, fraudulent or *mala fide* conduct, necessitating hearing of the case by a writ Court in which questions raised are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain.

14. Since there was a difference of opinion on the issue of disputes being arbitrable or not, issue was referred to a Bench of 3-Judges and the Supreme Court in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1*** answered the reference as follows: -

> ***"73.*** *A recent judgment of this Court in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. [Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713 : 2020 SCC OnLine SC 656] has examined the law on invocation of "fraud exception" in great detail and holds that N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] as a precedent has no legs to stand on. We respectfully concur with the said view and also the observations made in para 34 of the judgment in Avitel Post Studioz Ltd. [Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713 : 2020 SCC OnLine SC 656] , which quotes observations in Rashid Raza v. Sadaf Akhtar [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] : (Rashid Raza case [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] , SCC p. 712, para 4)*

> *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are : (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."*

to observe in Avitel Post Studioz Ltd. [Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713 : 2020 SCC OnLine SC 656] : (SCC para 35)

> *"35. … it is clear that serious allegations of fraud arise only if either of the two tests laid down are satisfied and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus, necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof but questions arising in the public law domain."*

74. *The judgment in Avitel Post Studioz Ltd. [Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713 : 2020 SCC OnLine SC 656] interprets Section 17 of the Contract Act to hold that Section 17 would apply if the contract itself is obtained by fraud or cheating. Thereby, a distinction is made between a contract obtained by fraud, and post-contract fraud and cheating. The latter would fall outside Section 17 of the Contract Act and, therefore, the remedy for damages would be available and not the remedy for treating the contract itself as void."*

15. It is, therefore, clear that it is not in every case where a mere allegation of fraud is raised by a party that the reference can be denied. The Supreme Court has held that serious allegations of fraud ought not to be adjudicated in arbitral proceedings and are best left to Courts. In ***Vidya Drolia (supra)***, the Supreme Court concurred with a view that in ***Avitel Post Studioz Limited (supra)*** that serious allegations of fraud arise only if either

of the two tests laid down therein are satisfied and not otherwise. Applying the judgments to the present case, in my view, Respondents have not made out a case that the disputes sought to be referred to arbitration by the Petitioner are non-arbitrable. It be noted that in the reply it is categorically acknowledged that there is an Arbitration Clause in the Agreement, executed between the parties. Respondents also admit that the loan was sanctioned by the Petitioner and only after verification of the title documents submitted by the erstwhile owner, Banker's Cheque was issued in her name. It is admitted that initially Respondents paid the due instalments of Rs. 1,76,828/- in time, which is reflected from the statement of account and it was later that Petitioner started levelling allegations of submitting fabricated documents by the Respondents. It is also admitted that Respondents have spent an amount of Rs. 2,96,37,000/- in the transaction in question. The only plea to oppose the petition is that officials of the Petitioner coerced the Respondents into signing the blank documents on 29.03.2023 under the garb of sanctioning the loan. This, in my view, is not a complex matter which cannot be adjudicated by the learned Arbitrator and the case of the Petitioner is covered by the judgment of the Supreme Court in ***Vidya Drolia (supra)***. Be that as may, being a petition under Section 9 of the 1996 Act, Arbitrator cannot be appointed by this Court in these proceedings without consent of the parties.

16. At this stage when the order has been dictated, counsel for the Respondents, on instructions, submits that Court may appoint a Sole Arbitrator and the disputes be referred for arbitration.

17. Accordingly, with the consent of the parties, Ms. Justice Pratibha Rani, former Judge of this Court, (Mobile No.9910384626) is appointed as a

Sole Arbitrator to adjudicate the disputes between the parties. Arbitration will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per the DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

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

19. 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. It will be open to the Petitioner to file an appropriate application for interim relief before the Arbitrator after the learned Arbitrator enters upon reference.

20. Petition along with pending application is disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 29, 2025
S.Sharma