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

+ **ARB.P. 1666/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner

Through: Ms. Mehvish Khan , Mr. Aman
Choudhary and Ms. Arunima Sinh
Jadaun, Advocates

versus

**SPECIALITY PRODUCTS AND EQUIPMENTS COMPANY
THROUGH ITS PARTNERS AND ORS**Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

10.01.2025

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Parties under the Loan Agreement dated 11.01.2018 entered into between the Petitioner and the Respondents.

2. It is stated that the Respondent No.1 is the partnership firm and Respondents No.2, 3 and 4 are its partners. A Loan Agreement dated 11.01.2018 was entered into between the Petitioner, Respondent No.1-Firm and the Respondents No.2 to 4 who are the co-borrowers. It is stated that Respondents No.2 to 4 are undergoing insolvency process under the provisions of the Insolvency and Bankruptcy Code, 2016 and the moratorium is applicable as far as the proceedings are concerned under Section 96 of the Insolvency and Bankruptcy Code, 2016.

3. Learned Counsel for the Petitioner contends that the proceedings



against the Respondents No.2 to 4 are stayed. However, there is no restrain for proceeding ahead against the Respondent No.1-Firm and it is for the Respondent No.1-Firm to establish regarding its position before the Arbitrator.

4. Clause 10.1 of the Loan Agreement dated 11.01.2018 contains an arbitration clause, which 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.”

5. Since the Respondents breached the terms and conditions of the Loan Agreement dated 11.01.2018, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking arbitration was issued on 17.07.2024. Since the Respondents failed to respond to the said notice, the Petitioner has approached this Court by filing the instant petition for appointment of an Arbitrator.



6. In view of the fact that disputes have arisen between the Parties and the Loan Agreement dated 11.01.2018 contains arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

7. Accordingly, Ms. Kartika Sharma, Adv. (Mob. No.9811666704) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

9. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

10. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 10, 2025

RJ