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

+ **ARB.P. 1684/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner

Through: Ms. Mehvish Khan, Advocate.

versus

SURAJIT BHUI AND ANRRespondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

04.02.2025

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1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Loan Agreement dated 01.02.2019.

2. The Petitioner is an NBFC and has advanced loan of Rs.20 lakhs to the Respondent, which is to be repaid in 36 installments of Rs.73,312/- each.

3. It is stated that the Respondents have shifted their address. It is stated that the Respondents have not complied with their obligations under the loan agreement. The loan agreement has been recalled. A notice under Section 21 of the Arbitration and Conciliation Act, 1996 was sent to the Respondent invoking arbitration on 24.06.2024 at the addresses mentioned in the loan agreement. It is stated that since the Respondents have not complied with their obligations, the Petitioner has approached this Court by filing the present petition seeking appointment of an Arbitrator.



4. The Petitioner has filed an affidavit of service stating that the Respondents have been served through email. The learned Counsel for the Petitioner draws attention of this Court to the loan agreement and more particularly to Clause 10.2 which deals with service of notices. Clause 10.2.1 reads as under:

“10.2.1 Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and signed by or on behalf of the Party giving it. Such notice shall be served by sending it by Contact to the number or delivering by hand, mail or courier to the address of the Borrower/Guarantor mentioned in the Schedule I to this Agreement. In each case it shall be marked for the attention of the relevant Party. Any notice so served shall be deemed to have been duly given (a) in case of delivery by hand, when hand delivered to the other Party; or (b) when sent by facsimile, upon receipt of a confirmation receipt and provided that the notice has been sent to correct facsimile numbers; or (c) when sent by post, where 5 Business Day(s) have elapsed after deposit in the post; or (d) when delivered by courier on the second Business Day after deposit with an international overnight delivery service, postage prepaid, with next Business Day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider. Any notice or communication to the Borrower shall be deemed to be a notice or communication to all the Borrower and the Guarantor (s).”

5. It is stated that the notice of the Court has been supplied and communicated on email Ids given in the Schedule-I to the agreement and therefore, the service is complete.



6. None has entered appearance on behalf of the Respondents.
7. The Office report indicates that service by e-mail is complete. However, other services could not be affected for want of address. Service through other modes is awaited. In view of the affidavit of service filed by the Petitioner, the service stands complete.
8. Material on record indicates that disputes have arisen between the parties regarding payment for the services as provided by the Petitioner. It is stated that a legal notice dated 24.06.2024 was sent by the Petitioner demanding payment of Rs.41,06,617/-/-. It is stated that the payment has not been made by the Respondents.
9. Since the payment has not been made as claimed under legal notice dated 24.06.2024, the Petitioner has approached this Court for appointment of an arbitrator to adjudicate on the disputes which have arisen between the parties.
10. Reply has been filed. However, the same is not on record. However, a physical copy of the said reply has been handed over in Court today.
11. In reply, it is stated that an unsigned copy of the Arbitration Agreement has been filed. The Respondents have not raised any contention regarding the existence of an Arbitration Clause in the reply. However, the Respondents dispute the existence of an Arbitration Clause.
12. In view of the fact that disputes have arisen between the parties, this Court is inclined to appoint Ms. Charu Aneja, Advocate, (Mob No.9717976711) as the Sole Arbitrator to adjudicate upon the disputes between the parties.
13. 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.

14. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within two weeks of entering on reference.

15. 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. This Court is not commenting anything on the contentions raised by the Respondent regarding the arbitrability of the disputes.

16. 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.

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

SUBRAMONIUM PRASAD, J

FEBRUARY 4, 2025

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