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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1712/2024

TATA CAPITAL HOUSING FINANCE LTD.

.....Petitioner

Through: Ms. Sobha Gupta, Mr. Akshita
Mishra, Advs. along with AR – Mr.
Ashish Kumar

versus

MOHAMMAD RIZWAN & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

16.04.2025

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of the Loan Sanction Letter dated 26.05.2017 and the related loan agreement.
2. The brief facts of the case are that in the year 2017, the respondents approached the petitioner for availing a home loan facility against the property, bearing House No.544/351 at Plot No.4, Khasra No.294/1, Almas Bagh Barura, Husain Bari, Lucknow- 226001.
3. The respondent no.1 is the principal borrower and respondent no.2 is the co-borrower.
4. The petitioner sanctioned loan amount of Rs.16,30,000/- vide the sanction letter dated 26.05.2017 under loan account No.9953181 and the same was to be paid in installments. Loan agreement and various other documents were executed between the parties setting out the terms and modes of repayment of the loan amount sanctioned.



5. The respondents, in order to secure the loan, mortgaged the property, being House No.541A/KH-531/01, Plot No.223A, Khasra No.553/1, Haiderganj Jadeed, Balakganj, Lucknow (UP).
6. Due to default committed by the respondents, the petitioner initiated SARFAESI proceedings.
7. Thereafter, the petitioner invoked arbitration *vide* Legal Notice dated 20.08.2024.
8. The Loan Agreement contains an arbitration clause, being clause 12.11(a), which reads as under:

“12.11 *Dispute Resolution*

a) If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the Security hereof, or the validity, interpretation, implementation or alleged breach of this Agreement or anything done or omitted to be done pursuant to this Agreement or otherwise in relation to the Security hereof, the parties shall attempt in the first instance to resolve the same through negotiation/ conciliation, if the dispute is not resolved through negotiation/ conciliation within thirty days after commencement of discussions or such longer period as the parties agree to in writing, then the same shall be settled by arbitration to be held at Chennai/Delhi/Mumbai in accordance with the Arbitration and Conciliation Act. 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by TCHFL in the event of death, refusal,



neglect, inability or incapability of the person so appointed to act as an Arbitrator, TCFL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all the parties concerned.”

9. Since the respondents were unserved, the petitioner took steps to serve the respondents through substituted service and have made publication in Jansatta and Financial Express, having circulation in Lucknow (UP).
10. Thus, the respondents are served and despite service, nobody is appearing on behalf of the respondents.
11. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Ms. Asmita Singh, Advocate (Mobile No.9643520339) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis and the rules 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.
- vii) The petitioner shall file an affidavit indicating the status of SARFAESI proceedings and amount recovered by them pursuant to the SARFAESI proceedings, before the learned Arbitrator.

12. The petition is disposed of accordingly.

JASMEET SINGH, J

APRIL 16, 2025/pk

Click here to check corrigendum, if any