



\$~O-4

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

+ **ARB.P. 2021/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner

Through: Mr. Mehnish Khan, Mr. Aman
Choudhary and Ms. Arunima,
Advocates.

versus

**THE FASHION STATION THROUGH ITS PROPRIETOR MR
SYED MOHAMMAD IMRAN ZAIDI AND ANR**

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

21.01.2025

%

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner seeking the appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties under the Master Loan Agreement dated 29.09.2022.
2. The service affidavit has been placed on record by the petitioner. It is stated in the affidavit that respondent no.1 was served through email at the email address: fsnoida@gmail.com and care@fashionstation.in on 26.12.2024. It is further stated that the said email has not bounced back.
3. Learned counsel for the petitioner also points out that in the email, the petitioner clearly stated that the matter would be taken up for consideration on 13.01.2025. The aforesaid communication which was sent through email



has also been placed on record along with an affidavit.

4. She also submits that with respect to respondent no.2, since the email that was sent to the address mentioned in the agreement bounced back; therefore, respondent no.2 was served on WhatsApp number 9878675645. She further states that the said WhatsApp number on which the notice was duly served, is the same which has been mentioned in the agreement.

5. At this juncture, reference can be drawn to the case of ***Lease Plan India (P) Ltd. v. Rudraksh Pharma Distributor (2024 SCC OnLine Del 2687)***, wherein, this Court permitted the service of the petition by email and WhatsApp. The Court held as follows:

“7. It is nonetheless clear that the respondents have been duly served by email and WhatsApp. It may be noted that the email address and the mobile number of the respondents is mentioned in the Agreement itself [at page Nos. 35, 37, 40 and 43 of the petition]. The affidavit of service dated 28.03.2024, affirmed by the authorised representative/legal counsel of the petitioner - company, demonstrates service by both these modes.

8. Although service by email and WhatsApp is sufficient, it may also be noted that in the Agreement itself, the address of the respondent for the purposes of correspondence, provided in Clause 10.3, is the address at which service has been attempted. The notice invoking arbitration sent to the same address was reported to have been delivered, but in the Speed Post report, by which the petition was sent to the address, it is stated that no such person is available at the address.”

6. In view of the aforesaid, and based on the affidavit of service and the steps undertaken by the petitioner, the Court is satisfied that the service compliance has duly been made. The notice was effectively served on the respondents through email and WhatsApp, both of which were explicitly mentioned in the Agreement as communication modes. Additionally, the petitioner has demonstrated that service on the second respondent was successfully effectuated via the WhatsApp number 9878675645, as provided in the Agreement, after the email sent to the registered address bounced



back.

7. In view of the aforesaid, the service to the respondents is deemed to be completed.

8. Furthermore, the Court takes note of Clause 8.2 of the Master Loan Agreement dated 29.09.2022, which reads as under:-

“8.2. 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.”

9. As per the petitioner, respondent No. 1 availed the loan of Rs.10,08,930/- in the month of September 2022 for the expansion of business and the said loan facility was sanctioned to respondent No. 1. The loan amount was disbursed to respondent No. 1 in terms of the Master Loan Agreement dated 22.09.2022, executed between both the parties with several terms and conditions. According to the petitioner, the respondents defaulted in the repayment of the loan amount, and thereafter, on 10.10.2024, the petitioner sent notice under Section 21 of the 1996 Act *via* e-mail, for invoking arbitration for amicable settlement of the disputes, to respondent No.1. According to the petitioner, the respondents are liable to pay an outstanding amount of Rs.7,12,844/- .



10. In view of the fact that disputes have arisen between the parties and there exists an arbitration clause in the Master Loan Agreement. Since the existence of the arbitration clause is evident from a perusal of the Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,¹ *TRF Limited v. Energo Engineering Projects Ltd.*,² *Bharat Broadband Network Limited v. United Telecoms Limited.*,³ and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*.⁴

11. The Court, therefore, appoints an Arbitrator to adjudicate upon the disputes between the parties.

12. Accordingly, Ms. Shilpa Ohri, Advocate (Mobile No. 9871900539 email ID shilpkapoorohri@gmail.com) is appointed as the sole Arbitrator.

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 Act within a week of entering on reference.

15. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

16. All rights and contentions of the parties in relation to the

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547

⁴ In re, 2023 SCC OnLine SC 1666.



claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

17. The petition stands disposed of in the aforesaid terms.

PURUSHAINDR KUMAR KAURAV, J

JANUARY 21, 2025

Nc/@m