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

+ **ARB.P. 2116/2024**

M/S. SINGH FINLEASE PVT. LTD.

.....Petitioner

Through: Mr. Murari Kumar, Mr. Shiv Shankar,
Mr. Yashwardhan Singh, Advs.

versus

M/S. SHARMA CAR SEAT COVERS & ORS.

.....Respondents

Through: Mr. Bagga, Mr. Rishi Raj, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.09.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Loan Agreement dated 26.12.2019.
2. The facts are that the petitioner advanced a loan of Rs. 32,03,300/- @ 24% p.a. to the respondents. Under the said Loan Agreement. Respondent No. 1 is the principal borrower and respondent Nos. 2, 3 and 4 are the co-borrowers (Respondent No. 4 is wrongly mentioned as 'Guarantor' in the Memo of Parties).
3. The said Loan Agreement contains an arbitration clause being Clause No. 21, which reads as under:

"21. All dispute, differences and/ or claim arising out of



these presents including any dispute as to any amount outstanding, or in any way touching or as to right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration & Conciliation Act 1996 or any statutory amendments thereof and shall be referred to the arbitration of a sole arbitrator, to be nominated by SFPL only and borrower shall have no right to object the appointment of the said arbitrator. In the event of death, refusal, inability or incapability of a person so appointed to act as an arbitrator, SFPL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration shall be final and binding on all parties concerned. The arbitration proceedings shall be held at Delhi and the arbitration shall be conducted in English language.”

4. Since disputes arose between the parties, the petitioner invoked arbitration *vide* legal notice dated 18.11.2024 and thereafter, filed the present petition.
5. Mr. Kumar, learned counsel for the petitioner states that since the respondents defaulted in the repayment of the loan, the petitioner invoked the arbitration clause of the Loan Agreement being Clause No. 21, *via* legal notice dated 18.11.2024. It is stated that the said arbitration clause stipulates that any disputes arising under the Loan Agreement shall be resolved through arbitration conducted by a Sole Arbitrator nominated by the petitioner. However, the petitioner seeks



a neutral appointment of an Arbitrator by exercising discretion of this Court under Section 11(6) of the 1996 Act, in light of the principle established by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd. (2020) 20 SCC 760.***

6. Mr. Bagga, learned counsel is appearing on behalf of respondent No. 3 and Mr. Raj, learned counsel is appearing on behalf of respondent No. 4.
7. Nobody is appearing on behalf of respondents No. 1 and 2 because Respondent No. 2, who was the proprietor of Respondent No. 1, has passed away. It is stated that respondent No. 3 is the legal heir of the respondent No. 2.
8. Mr. Bagga, learned counsel for the respondent No. 3 submits that the legal notice dated 18.11.2024 issued by the petitioner under Section 21 of the 1996 Act is defective. He states that in terms of the arbitration clause being Clause No. 21 of the Loan Agreement, the petitioner was required to nominate an Arbitrator, and then the respondents had 30 days to dispute to the said appointment of the Arbitrator, in terms of Section 11(5) of the 1996 Act. It is stated that only after lapse of the said 30 days could the petitioner had filed the petition under Section 11(6) of the 1996 Act. Hence, he states that the present petition filed under Section 11(6) of the 1996 Act is premature and due to the same the respondents lost their substantive right to respond to the invocation notice dated 18.11.2024.
9. He relies upon the judgment of the Hon'ble Bombay High Court in ***D.P. Construction v. Vishvaraj Environment (P) Ltd., 2022 SCC OnLine Bom 1410***, more particularly paragraph Nos. 22 to 26, which



read as under:

“22. It becomes clear from the position of law pertaining to section 21 of the said Act, that invocation of arbitration has to be in clear terms, as specified in the said provision, and that mere reference to claims and disputes sought to be raised by a party and existence of an arbitration clause would not itself mean that arbitration has indeed been invoked by such a party. Therefore, it becomes necessary to examine in detail the legal notice issued by the applicant in the present case and the reply sent by the non-applicant. If it can be said that the legal notice sent by the applicant amounted to invoking the arbitration clause and seeking reference of the dispute to arbitration, failure on the part of the non-applicant to respond to the same, would certainly entitle the applicant to maintain the present application filed under section 11(6) of the said Act before this Court.

23. A perusal of the legal notice dated 7-10-2020 shows that the applicant has referred to the work order dated 7-3-2019, the clauses of the work order, various aspects which could be categorized as claims and disputes raised by the applicant and finally the applicant has stated in paragraph 11 of the notice as follows.

“11) Now unless the amount of Rs. 73,53,038/- together with interest @ 15% p.a. is released within a period of ONE month from the receipt of this instant notice, my client shall be constrained to such redressal of his



grievances by approaching the competent Court of Law holding you noticees responsible for cost and consequences which please note and do the needful.”

24. It is significant that despite raising claims and demanding specific amount with interest within one month from the non-applicant, the applicant has not referred to the arbitration clause i.e. clause 29 of the work order, at any place in the said legal notice. In the above quoted paragraph 11 of the notice also, there is no reference to the intent of the applicant to invoke arbitration, leave alone naming an arbitrator or calling upon the non-applicant to agree to appointment of a sole Arbitrator. In fact, all that the applicant has stated in the above quoted paragraph 11 of the notice, is that the applicant would be constrained to seek redressal by approaching the competent Court of Law. An attempt was made by the learned counsel appearing for the applicant to contend that this ought to be read as invocation of arbitration clause, as there was dispute between the parties and there was an arbitration clause in existence.

25. Considering the position of law as clarified by this Court in the case of Malvika Rajnikant Mehta v. JESS Construction (supra) and the Delhi High Court in the case of Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd. (supra) pertaining to the purposes that a notice invoking arbitration under section 21 of the said Act serves,



with which this Court is in agreement, the notice invoking arbitration ought to be absolutely clear with reference to the arbitration clause and with clear intent of calling upon the rival party to proceed for appointment of an Arbitrator and referring the disputes to arbitration. The words in section 21 of the said Act, as regards commencement of arbitral proceedings specifically refer to a request for the dispute to be referred to arbitration. Hence, unless there is a request by a party that the dispute is to be referred to arbitration, merely stating the claims and disputes in the notice would not suffice. In the present case, even in the reply sent by the non-applicant, there is no reference to the arbitration clause or any intent on the part of the non-applicant to refer the dispute to arbitration, despite claiming huge amount from the applicant. This clearly indicates that in the present case, arbitration itself was not invoked by either party as per the agreed procedure under section 11(2) of the said Act read with section 21 thereof.

26. In absence of the agreed procedure being triggered by either party for reference of the dispute to arbitration, the question of failure thereof would not arise and hence, the precondition for invoking section 11(6) of the said Act for approaching this Court was not satisfied. This aspect goes to the very root of the matter and hits at the very jurisdiction of this Court to entertain the application for appointment of said Act. The non-applicant is justified in contending that



therefore, the present application deserves to be rejected only on the said limited ground. The learned counsel for the applicant is not justified in contending that the legal notice dated 7-10-2020, can be constructively read as a notice invoking arbitration under section 21 of the said Act and that the preliminary objection is hyper-technical in nature. This is for the reason that there are legal consequences to invoking of arbitration as contemplated under section 21 of the said Act, including the aspect of limitation, and other such purposes which have been enumerated in the above quoted judgments of this Court and the Delhi High Court. Therefore, merely because there is an arbitration clause, it cannot be said that this Court ought to exercise jurisdiction under section 11(6) of the said Act.”

10. I have heard learned counsels for the parties.
11. It is settled law that there is no straight jacked formula for a notice invoking arbitration under Section 21 of the 1996 Act, as observed by this Court in ***The Prasara Bharti v. Visual Technologies India Pvt. Ltd., in ARB.P. 558/2023 in order dated 18.03.2024***, and reiterated in ***National Research Development Corporation and Anr. v. M/S Ardee Hi-Tech Pvt. Ltd., 2025:DHC:3939***, which was upheld by the Hon’ble Supreme Court. The relevant paragraph of ***The Prasara Bharti (supra)*** is extracted below:

“9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a



request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-

a. The dispute between the parties.

b. The demand to resolve the disputes as per the envisaged arbitration clause.

c. In case, the disputes are not resolved the intention to resort to the arbitral process.

d. The notice must be sent to the respondent.”

(Emphasis added)

12. In the present case, the legal notice invoking arbitration is extracted below:-



DOCUMENT-P-4



Legal Vibes
Advocates & Solicitors

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THROUGH SPEED POST/COURIER

To,

Dated: 18.11.2024

1. M/s Sharma Car Seat Covers
Through its proprietor (Borrower)
Flat No-1570, Sector - 37, Arun Vihar,
Gautam Budh Nagar Uttar Pradesh - 201303
Mobile No. 8447722059
2. Mr. Sunil Sharma (Co-Borrower)
Proprietor of M/s Sharma Car Seat
Flat No-1570, Sector - 37, Arun Vihar,
Gautam Budh Nagar Uttar Pradesh - 201303
Mobile No. 8447722059
3. Mrs. Neetu Sharma (Co. Borrower)
Flat No-1570, Sector - 37, Arun Vihar,
Gautam Budh Nagar Uttar Pradesh - 201303
Mobile No. 8826372273
4. Mrs. Savita Sharma (Co. Borrower)
Flat No-1570, Sector - 37, Arun Vihar,
Gautam Budh Nagar Uttar Pradesh - 201303
Mobile No. 8447722059

SUB: Invocation of Arbitration Clause 21 Of Loan Agreement Dated 26.12.2019 Under Loan No.FW/DEL/LAP/00306.

Dear Addressee,

Under instructions and on behalf of M/s Singh Finlease Pvt. Ltd. (hereinafter referred to as 'Our Client') having its registered office at situated at A-29, Mangolpuri Industrial Area, Phase -II, New Delhi-110034. We, do hereby serve upon

Office Address : G-27, First Floor, Jangpura Extension, New Delhi-110014
Phone : 011-43580335 Mobile : +91-9212515045, +91-9810148367
Email : legalvibes.lawfirm@gmail.com



you the present Notice invoking Arbitration clause 21 as per the record of the Loan Agreement dated 26.12.2019 under the following circumstances, these are:

1. That you the addresses have availed a loan facility of Rs. 32,03,300/- (Rupees Thirty Two Lakhs Three Thousand Three Hundred) from our client and have entered into a Loan Agreement dated 26.12.2019 (hereinafter referred to as the "Agreement") with our client above named.
2. That You the Addresses, have defaulted on the repayment of EMIs under loan no. FW/DEL/LAP/ 00306, resulting in default and breach under clause 7.1 of the said Agreement dated 26.12.2019.
3. That as per records, a sum of **Rs. 42,70,172/-** inclusive of all penal charges is due and payable to our client under loan account **FW/DEL/LAP/ 00306** as of **12.01.2023**. This outstanding amount was duly communicated to you through the **Loan Recall Notice** dated **07.02.2023**, which was addressed to all relevant parties by our client. Despite receiving the recall notice, the addressee has remained unresponsive, and payment has still not been made to our client up to the present date.
4. In addition to the above, you, the addressees, are liable for the payment of all future interest, charges, and penalties accruing until the outstanding amount is fully settled, including any legal costs incurred in pursuing such payment. Accordingly, by this notice, our client hereby invokes the arbitration clause set forth in the Loan Agreement dated 26.12.2019.
5. In view of the above, we, on behalf of our client, do hereby call upon you the addressee to deposit the full outstanding amount, as stated above, with our client, M/s Singh Finlease Pvt. Ltd., within 7 days from the date of receipt of



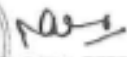
Handwritten signature



this notice, failing which, our client shall compel to initiate the process for the appointment of a sole arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, before the Hon'ble High Court of Delhi, at your cost and risk. Kindly take notice that such action will be pursued without further notice.

A copy of the present Letter/Notice is retained in my Office for any future course of action.

Thanking You,

Sincerely,

MURARI KUMAR
(ADVOCATE)

On behalf of M/s. Singh Finlease Pvt. Ltd.

13. The “subject” of the legal notice, as reproduced above, itself demonstrates that the petitioner is invoking the arbitration clause of the Loan Agreement executed between the parties, i.e. Clause No. 21. A perusal of the notice further shows that the petitioner has identified the disputes and called upon the respondents to make the outstanding payment and has clearly stated that in case the outstanding payment is not made within a period of 7 days from the receipt of the notice, the petitioner would initiate the process for appointment on an Arbitrator under Section 11(6) of the 1996 Act. Hence, the legal notice dated 18.11.2024 fulfils the ingredients required in a notice invoking arbitration under Section 21 of the 1996 Act and therefore, amounts to a valid notice invoking arbitration.
14. Further, with respect to the judgment of ***D.P Construction (supra)*** relied upon by the respondent, the same is distinguishable. In ***D.P***



Construction (supra) claims were raised and amount was demanded in the legal notice, however, the applicant therein did not refer to the arbitration clause in the legal notice nor there was any reference to the intent of the applicant to invoke arbitration. However, in the present case, as observed above, the petitioner in the legal notice dated 18.11.2024 has not only invoked the arbitration clause, i.e. Clause No. 21 but also stated that the petitioner would initiate the process for appointment on an Arbitrator under Section 11(6) of the 1996 Act, in case the respondents fail to reply to the said legal notice. Hence, legal notice dated 18.11.2024 fulfils the conditions of a valid notice under Section 21 of the 1996 Act, as laid down in ***The Prasara Bharti (supra)***.

15. Additionally, the objection pertaining to the 30 days statutory period provided under Section 11(5) of the 1996 Act, is meritless. In the present case, the notice invoking arbitration issued by the petitioner is dated 18.11.2024 and more than 30 days have elapsed since then.
16. Further, the submission by the learned counsel for respondent No. 3 that the petitioner should have invoked the arbitration clause i.e., Clause No. 21 under Section 21 of the 1996 Act for appointment of the Arbitrator, is also misplaced. The arbitration clause reproduced above clearly shows that the petitioner had sole power to appoint the Arbitrator. The said clause is contrary to the view taken by the Hon'ble Supreme Court in the judgment of ***Perkins Eastman Architects (supra)***, wherein it was held that a person who has an interest in the outcome of the dispute must not have the power to appoint Arbitrator(s), as the same leads to apprehension of bias and



prejudice.

17. For the said reasons, the petition is allowed, with the following directions:-

- i) Ms. Neelampreet Kaur (Advocate) (Mob. No. 9650080047) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the '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 1996 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.

18. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 3, 2025/sp