



2025:DHC:1123



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 101/2025**

Date of Decision: **17.02.2025**

IN THE MATTER OF:

MONEYWISE FINANCIAL SERVICES PVT LTD

..... PETITIONER

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

Versus

**ARIHANT AGENCY THROUGHT ITS PROPREITOR MR
RUPEN MAHENDRAKUMAR SHAH AND ORS.**

.... RESPONDENTS

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under the Master Loan Agreement dated 03.01.2019.



2. The office report indicates that the service on all the respondents stands complete.
3. Learned counsel for the petitioner submits that the petitioner is a Non-Banking Financial Company (NBFC), registered with the Reserve Bank of India (RBI) as an NBFC-ND, providing loan facilities to individual and corporate clients. He submits that respondent No. 2, in the capacity of proprietor, along with respondent No. 3, approached the petitioner for availing a loan facility of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) for business expansion. Based on the business profile, credibility, and assurances of the respondents, the loan facility was sanctioned.
4. According to learned counsel, respondent No. 2, along with respondent No. 3, stood as co-borrowers/co-applicants in their personal capacities under the said loan agreement, and are jointly and severally liable for the repayment of the outstanding amount as per the terms and conditions of the Master Loan Agreement dated 03.01.2019. The loan amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only), which was disbursed under Business Loan Account No. CT00487 in terms of the Master Loan Agreement dated 03.01.2019, duly executed between the parties, was repayable in 36 equated monthly instalments of Rs. 73,312/- (Rupees Seventy-Three Thousand Three Hundred and Twelve Only) per month. According to the petitioner, the respondents undertook to abide by the terms and conditions of the loan agreement. However, they failed to adhere to the agreed terms and defaulted in clearing the outstanding payments. Consequently, the petitioner issued a Loan Recall Notice/Termination of



Agreement dated 14.07.2022 to the respondents due to their repeated defaults.

5. It is submitted by the petitioner that the respondents siphoned off the loan amount and failed to fulfil their repayment obligations under the loan agreement, thereby deceiving the petitioner. The petitioner has also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, against the respondents in the year 2024, but to no avail. He submits that clause 10.1 of the Master Loan Agreement dated 03.01.2019 provides that in case of a dispute, the same shall be referred to arbitration. Accordingly, on 29.10.2024, the petitioner issued a Demand-cum-Notice for Invocation of Arbitration under Clause 10.1 of the Master Loan Agreement, seeking an amicable settlement of the dispute.

6. Heard learned counsel appearing on behalf of the petitioner.

7. The Court takes note of the Clause 10.1 of the Master Loan Agreement dated 03.01.2019, which reads as under:-

“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 or the 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 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 the proceedings shall be english. The Award 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 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 arbitral tribunal. Any award by the Arbitration tribunal shall be final and binding.”

8. A perusal of the petition indicates that the loan amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) was disbursed, bearing Business Loan Account No.CT00487, to the respondents in terms of the Master Loan Agreement dated 03.01.2019 executed between the parties with several terms and conditions. The said loan amount was repayable in 36 instalments of Rs.73,312/- per month. The respondents are stated to have defaulted in the repayment of the loan amount. The petitioner, thereafter, issued a Loan Recall/Termination of Agreement dated 14.07.2022.

9. It is evident that there exists an arbitration clause in the event any dispute has arisen between the parties. 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.

10. Despite notice dated 24.10.2024 under Section 21 of A&C Act, 1996, the balance amount was not paid, and in view of the fact that there is an arbitration clause in the Master Loan Agreement, this Court is inclined to

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



appoint an Arbitrator to adjudicate upon the disputes between the parties.

11. Accordingly, Mr. K. Krishan Kumar, Advocate (Mobile No.9871320705; e-mail id: krishna198229@gmail.com) is appointed as the sole Arbitrator.

12. 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.

13. 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.

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

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.

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

PURUSHAINdra KUMAR KAURAV, J

FEBRUARY 17, 2025

Nc/sp

Click here to check corrigendum, if any

⁴ In re, 2023 SCC OnLine SC 1666.