



2025:DHC:1124



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

+ **ARB.P. 2107/2024**

Date of Decision: **17.02.2025**

IN THE MATTER OF:

MONEYWISE FINANCIAL SERVICES PRIVATE LIMITED
..... PETITIONER

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

Versus

ANA INTERVENTIONAL PVT LTD THROUGH ITS DIRECTORS
AND ORS
.... RESPONDENTS

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C 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 15.04.2019.
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.

4. He submits that respondents No. 2 and 3 (who are the Directors of respondent No. 1 Company), availed a loan facility from the petitioner company *vide* Loan Agreement dated 15.04.2019. Respondents No. 2 and 3 stood as co-borrowers/co-applicants/guarantors in their individual capacities. Consequently, the respondents No. 1, 2, and 3 are jointly and severally liable for repayment of the outstanding loan amount.

5. He further submits that the loan amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) was disbursed to respondent No. 1 in terms of the Master Loan Agreement dated 15.04.2019, executed between the parties under various stipulated terms and conditions. The said loan amount was to be repaid in equated monthly installments. The loan was repayable in 36 installments of Rs. 54,984/- each. The respondents defaulted on repayment and violated the terms of the Loan Agreement, leading the petitioner to issue a Loan Recall Notice/Termination Notice dated 10.02.2021.

6. The petitioner further submitted that he has initiated four cases under the provisions of Section 138 of the Negotiable Instruments Act, 1881, between 2021 and 2024 against the respondents, but the amounts remain unpaid. He draws the attention of the Court to Clause 10.1 of the Loan Agreement dated 15.04.2019, which stipulates that any dispute arising between the parties shall be referred to arbitration. According to him, as of 17.09.2024, the respondents are liable to pay Rs. 23,47,929/- (Rupees



Twenty-Three Lakhs Forty-Seven Thousand Nine Hundred and Twenty-Nine Only) along with *pendente lite* and future interest.

7. On 11.11.2024, the petitioner sent the notice *via* email to the addresses provided by the respondents. Additionally, on 12.11.2024, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, invoking arbitration and seeking amicable settlement of disputes.

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

9. The Court takes note of the Clause 10.1 of the Master Loan Agreement dated 15.04.2019, 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.”

10. A perusal of the petition indicates that the loan amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) was disbursed to respondent no.1 in terms of the Master Loan Agreement dated 15.04.2019 executed between the parties with several terms and conditions. Respondent nos.2 and 3 stood as co-applicant and borrower/ guarantor to the said loan facility. The



said loan amount was repayable into 36 instalments of Rs.54,984/- each. The respondents are stated to have defaulted in the repayment of the loan amount. The petitioner, thereafter, issued a Loan Recall/Termination dated 10.02.2021.

11. 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.

12. Despite notice under Section 21 of A& C Act, 1996 through e-mail dated 28.10.2024, on the last known address, 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 appoint an Arbitrator to adjudicate upon the disputes between the parties.

13. Accordingly, Mr. Sirhaan Seth, Advocate (Mobile No.9999656870; e-mail ID:adv.sirhaanseth@gmail.com) is appointed as the sole Arbitrator.

14. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547

⁴ In re, 2023 SCC OnLine SC 1666.



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regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

15. 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.

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

17. 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.

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

PURUSHAINDR KUMAR KAURAV, J

FEBRUARY 17, 2025

Nc/sp

Click here to check corrigendum, if any