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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 04.12.2024**+ **ARB.P. 921/2024 and IA No.39598/2024**

MONEYWISE FINANCIAL SERVICES PVT LTDPetitioner
Through: Ms. Mehvish Khan, Adv. (through
v/c), Mr. Aman Choudhary and Ms.
Arunima Sinha Jadaun, Advs.

versus

VINAY ENTERPRISES THROUGH ITS PROP SH VINAY
KUMAR AND ANR.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition filed under Section 11 of Arbitration and Conciliation Act, 1996 seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Loan Agreement dated 17.06.2021. The said Loan Agreement contains an arbitration clause as under:

“8.2 Arbitration:

Any dispute, 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 (for 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 shall be final and binding.”

2. Disputes having arisen between the parties, a loan recall notice dated 07.11.2023 was issued by the petitioner. However, the same was not responded to by the respondents nor was the outstanding amount under the Loan Agreement paid by the respondent. Consequently, a notice of invocation of arbitration dated 06.06.2024 was sent by the petitioner to the respondents. The same is stated to have been issued un-responded.
3. Notice in the present petition was issued to the respondents on 05.07.2024.
4. Vide order dated 02.12.2024, passed by the Joint Registrar (Judicial), it was recorded that the respondent no.1 has been duly served on 18.09.2024. Despite the same, there is no reply filed on behalf of the respondent no.1. Consequently, vide order dated 02.12.2024 passed by the Joint Registrar (Judicial), the respondent no.'s 1 right to file reply was closed.
5. None appears for the respondent no.1 even today.
6. The order dated 02.12.2024, passed by the Joint Registrar (Judicial) also records that the respondent no.2 has been duly served through publication on 28.10.2024. There is no appearance even on behalf of the respondent no.2.



7. Since the existence of the arbitration agreement is apparent from a perusal of the agreement dated 17.06.2021, there is no impediment to constituting an arbitral tribunal in terms of judgment of Supreme Court in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* In re, 2023 SCC OnLine SC 1666, and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine SC 1754

8. Accordingly, Mr. Roshan Lal Goel, Advocate (Mob.No. +91 (9654169406) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

9. At request of the petitioner, the arbitration shall take place under the aegis of and under the rules of the Delhi International Arbitration Centre (DIAC). It is directed accordingly.

10. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

11. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

12. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

13. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 4, 2024/cl