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

+ O.M.P.(I) (COMM.) 359/2018

PNB HOUSING FINANCE LTD. Petitioner

Through: Mr. Ajay Kohli, Mr.S.S.Sobti and
Ms.Bhumika Kapoor, Advocates.

versus

MANOJ AGARWAL & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **18.09.2018**

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed on the basis of the Arbitration Agreement contained in the Loan Agreement dated 2nd March, 2016 executed between the parties. Clause 10.5 and 10.6 of the Agreement would have a bearing on the question whether this Court has territorial jurisdiction to entertain the present petition, and are reproduced hereinunder;

"10.5 Governing Law & Jurisdiction

This Agreement, including all matters relating to its validity, construction, performance and enforcement shall be governed by and construed in accordance with Indian law. The courts of Jaipur shall have exclusive jurisdiction in relation to any matter arising under or in connection with this Agreement or any agreement entered into pursuant to this Agreement. However, the Parties hereby agree, confirm and undertake that PNBHFL has a right to file its claim in relation to Outstanding Amount or any other connected matter(s)

as mentioned in this Agreement in any other competent Court in India at its sole discretion.

10.6 Arbitration

Any and all disputes, claims, difference arising out of or in connection with this Agreement and the Schedule or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the PNBHFL and the award thereupon shall be binding upon the Parties to this Agreement. The place of arbitration shall be in Delhi or any other place as arbitrator may decide, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The proceeding of Arbitration Tribunal shall be conducted in English language. Each party has to bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be shared equally unless/ otherwise provided for in the award.

The Borrower further agrees that all claims, difference and disputes, arising out of or in relation to dealings/transaction made in pursuant to this Agreement including any question of whether such dealing, transaction have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only.”

2. The reading of the above Clauses clearly shows that while clause-10.5 confers exclusive jurisdiction in the Courts at, Jaipur, the second part of Clause 10.6 confers the exclusive jurisdiction to the Courts at Delhi. Over and above this, the place of arbitration has been described to be “ in Delhi or any other place as arbitrator may decide.”

3 In view of the apparent conflict between 10.5 and second part of Clause 10.6, in my opinion, jurisdiction would have to be governed by the

ordinary law as provided in the Code of Civil Procedure, 1908.

4. In the present case, the Loan Agreement has been executed at Jaipur and even the Respondents are the residents of and work for gain in Jaipur. Therefore, the Courts at Jaipur alone would have territorial jurisdiction interms of Section 20 of the Code of Civil Procedure, 1908 read with Section 2 (1) (e) of the Act to adjudicate the disputes arising out of the Loan Agreement.

5. As far as reliance on Clause 10.6 of the Agreement, which provides that the arbitration shall take place in Delhi or any other place, as Arbitrator may decide the place of arbitration, the same clearly refers to the 'venue' and not the 'seat' of the Arbitration. Therefore, the Judgment of Supreme Court in *INDUS Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Ors. (2017) 7 SCC 678* would have no application to the facts of the present case.

6. In view of the above, in my opinion, this Court would not have territorial jurisdiction to entertain the present petition.

7. The present petition is dismissed granting liberty to petitioner to file the same, if so advised, before the Court of competent jurisdiction.

8. *Dasti.*

NAVIN CHAWLA, J

SEPTEMBER 18, 2018

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