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

+ O.M.P. (T) (COMM.) 39/2021, IAs 5802/2021 (stay) and 5803/2021 (exemption)

ASHOK KUMAR R & ORS. Petitioners
Through Mr. Kushal Gupta, Adv.

versus

PNB HOUSING FINANCE LIMITED Respondent
Through Mr. Ajay Uppal, Adv.

CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR

O R D E R (ORAL)
% **20.05.2021**
(video-conferencing)

O.M.P. (T) (COMM.) 39/2021

1. Arbitral proceedings, between the parties, were pending before Mr. K.K. Nangia, who had been appointed as arbitrator in terms of Clause 10.8 of the Loan Agreement, whereunder the disputes between the parties arose. Clause 10.8 of the Loan Agreement reads thus:

“Any and all disputes, claims, differences arising out of or in connection with the Loan Documents and/or the performance of the Loan Documents shall be settled by Arbitration to be referred to a sole arbitrator to be appointed by PNBHFL and the award, thereupon, shall be binding upon the Parties. The place of arbitration shall be in Delhi or any other place as arbitrator may decide and shall be 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. The cost of arbitration, including fees and

expenses of the arbitrator, shall be shared equally by the Parties, unless the award otherwise provides.

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

2. It is a settled position, in law, flowing from Section 12(5) of the Arbitration and Conciliation Act, 1996 (“1996 Act”) read with the VII Schedule thereto, as well as the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹ and *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*² that authority to appoint an arbitrator cannot be conferred entirely on one of the parties to the arbitration agreement and that such conferral, even if it exists, is unenforceable at law. In its recent decision in *Haryana Space Application Centre v. Pan India Consultants Pvt Ltd*,³ the Supreme Court has further clarified that Section 12(5) of the 1996 Act is mandatory.

3. The petitioner had moved an application, before the learned Arbitrator under Section 13 of the 1996 Act, questioning the authority of the arbitrator to continue with the arbitral proceedings, and relying, for the purpose, on *Perkins Eastman*¹ and other authorities.

4. The learned Arbitrator has disposed of the said application *vide*

¹ (2019) 2 SCC 271

² (2019) 5 SCC 755

³ (2021) 3 SCC 103

order dated 18th May, 2021, by recusing from the proceedings.

5. Learned Counsel for the parties are agreeable, *ad idem*, that in these circumstances, the Court may appoint an arbitrator in place of Mr. Nangia. The stakes in the matter are stated to be in the region of around ₹ 3 crores.

6. In view thereof, this Court appoints Mr. Sushil Dutt Salwan, learned Senior Advocate, as the Arbitrator to arbitrate on the disputes between the parties. The details of the learned Arbitrator are as under:

Mobile No. : 9811044412

E-mail ID : sushil.salwan@gmail.com

7. The learned Arbitrator would file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

8. The learned Arbitrator is also permitted to continue the proceedings from the point where they stand at present.

9. Mr. Nangia is also directed to return the arbitral records to the parties, so that they could be furnished to the Arbitrator appointed by the order passed today.

10. With the aforesaid directions, the present petition stands disposed of.

IAs 5802/2021 (stay) and 5803/2021 (exemption)

In view of the order passed in the petition, these applications stand disposed of.

C.HARI SHANKAR, J

MAY 20, 2021
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HIGH COURT OF DELHI



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