



ARB-339-2024 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

(124)

ARB-339-2024 (O&amp;M)

Date of decision:- 29.10.2024

**M/S SWAN GENX PROJECTS PVT. LTD. (THROUGH ITS  
AUTHORIZED SIGNATORY MOHINDER PAL SHARMA)**

... PETITIONER

**VERSUS**

**SHIALINI AGGARWAL AND OTHERS**

... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Ms. Sunint Kaur, Advocate  
for the petitioner.

Mr. Aditya Jain, Advocate and  
Mr. Amit Luthra, Advocate  
for the respondents (through V.C.)

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**SUVIR SEHGAL, J. (ORAL)**

1. By way of instant petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), petitioner has approached this Court for appointment of an Arbitrator.

2. Counsel for the petitioner submits that the petitioner entered into a lease agreement, Annexure P-1, with the respondents on 26.10.2017, whereby commercial premises in "Ansal The Boulevard Mall" Ludhiana were taken on lease from the respondents for a period of 15 years at Rs.3.56

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lacs per month for operating a Fitness Health Centre and Gymnasium. Counsel submits that under Clause 5 of the agreement, respondents were bound to maintain the common area and provide various facilities. In particular, by making a reference to Article 5.3 of the agreement, she submits that facilities like 100% power backup, chiller, lifts and elevators have not been provided by the respondents. She submits that as a dispute arose between the parties, petitioner invoked the Arbitration Clause by serving a legal notice dated, 02.05.2024, Annexure P-2, and in their response dated 01.06.2024, Annexure P-3, the respondents have taken a stand that the dispute is not arbitrable.

3. Upon notice by this Court, reply has been filed on behalf of the respondents, wherein it has been submitted that the respondents have filed a petition under Section 20 (2) (a) of the Punjab Rent Act, 1995 (for short “the Rent Act”) for eviction against the petitioner on account of non-payment of rent, which is pending. Counsel for the respondents submits that the respondents were not bound to provide the facilities as per Article 5 of the agreement. He has placed reliance upon Sections 17 to 19 of the Rent Act to urge that the duties of the landlord and tenant have been described in the statute and, in case, either of the parties failed to fulfill their duties, remedy has been provided under Section 19, *ibid*.

4. I have heard counsel for the parties and considered their respective submission.

5. It is evident from the documents on the record that a dispute has arisen between the parties. As to whether the respondents are liable to

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provide the facilities or not is a matter, which requires to be adjudicated by the Arbitrator. No doubt, eviction petition has been filed by the respondents, which is pending, however, the petition is for vacation of the premises. An examination of the provisions of the Rent Act shows that the maintenance and facilities as provided under Article 5 of the agreement cannot be enforced through the medium of the statute and the argument of counsel for the respondents that the remedy lies under Section 19 of the Act, is of no avail.

6. Very recently, while dismissing the SLP and imposing costs of Rs.50,000/-, Supreme Court in **Central Warehousing Corporation and another Versus M/s Sidhartha Tiles & Sanitary Pvt. Ltd.**, decided on 2.10.2024, held that application under Section 11 of the Arbitration Act relates to promises and reciprocal promises arising out of the agreement between the parties. The claim for arbitration rests on the interpretation, construction and the obligations arising out of the agreement, whereas the Public Premises Act, 1971 provides for ejection of tenant in unauthorised possession of public premises. It neither bars nor overlaps the scope and ambit of proceedings initiated under the Arbitration Act. This judgment can safely be relied upon.

7. Resultantly, petition is allowed. Ms. Justice (Retd.) Jaishree Thakur, a former Judge of this Court, resident of House No. 36, Sector 8-A, Chandigarh, Mobile No. 9814125236 is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.



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8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at her convenience.
9. Liberty is granted to the parties to make a request before the learned Arbitrator to hold the proceedings at Ludhiana, for which the expenses will be borne by the parties.
10. Parties will be at liberty to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.
11. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitral proceedings and any observation hereinabove made will not be binding on the learned Arbitrator.
12. A request letter alongwith a copy of the order be sent to Ms. Justice (Retd.) Jaishree Thakur.
13. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)  
JUDGE

29.10.2024

Kamal

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |