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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 123/2024**
M/S CARREGE COMMODITIES PVT LTD Petitioner

Through: Counsel (appearance not given).

versus

M/S PNB HOUSING FINANCE LIMITED Respondent

Through: Mr. Anish Bhala with Ms. Parul
Mahajan Bhala, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **25.04.2024**

I.A. 9093/2024

Exemption granted, subject to just exceptions.

Application stands disposed-of.

O.M.P.(I) (COMM.) 123/2024

By way of the present petition filed under section 9 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks interim measures of relief, by way of stay of the auction of properties, with details as mentioned in Annexure-A to communication dated 28.03.2024, scheduled for today.

2. Disputes between the parties are stated to have arisen in relation to a loan account, whereby certain monies were advanced by the respondent to the petitioner. Though the loan agreement has not been placed on record, learned counsel for the petitioner draws attention to clauses



10.7 and 10.8 of the General Terms and Conditions governing the loan, which have been extracted in communication dated 07.02.2024 issued by the respondent to the petitioner.

3. It is observed that clauses 10.7 and 10.8 contemplates reference of disputes between the parties to arbitration and designates the ‘place’ of arbitration to be at Delhi; with a further stipulation, that the transaction between the parties shall be subject to the exclusive jurisdiction of the courts at Delhi.
4. Issue Notice.
5. Mr. Anish Bhala, learned counsel is present on behalf of the respondent on advance copy; accepts notice; and draws attention of this court to order dated 08.02.2024 passed by a Co-ordinate Bench of the High Court of Karnataka at Bengaluru in WP No. 29028/2023 titled ***M/s Carreg Commodities Pvt. Ltd. vs. M/s PNB Housing Finance Limited***, to point-out that the petitioner has already made more than 07 attempts by way of various proceedings before the High Court of Karnataka to stall the sale of the subject property. Mr. Bhala further submits, that as the order indicates, all such attempts have come to a naught. The order in fact records, that the proceedings in WP No. 29028/2023 were the 09th in a series of such attempts; while dismissing that petition as withdrawn.
6. After making some submissions however, Mr. Bhala submits, that they are willing to have the disputes between the parties referred to arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi (‘DIAC’), without however stalling the auction of the subject properties, which is scheduled for today.



7. Learned counsel for the petitioner is also agreeable to this course of action.
8. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties do not appear *ex-facie* to be non-arbitrable.
9. In the circumstances, learned counsel for the parties jointly request that this court may appoint an arbitrator; and then refer the matter for arbitration to DIAC, keeping all their respective factual and legal contentions open.
10. Accordingly, the present petition is allowed and **Hon'ble Mr. Justice Dipak Misra, former Chief Justice of India (Cellphone No.: +91 9560333111)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
11. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
12. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.



13. 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 merits, in accordance with law.
14. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
15. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
16. It is made clear that this court has *not* stayed the auction proceedings initiated by the respondent in respect of the subject properties.
17. Needless to add, the petitioner shall be at liberty to move an appropriate application under section 17 of the A&C Act before the learned Arbitrator seeking interim measures of protection, if so advised, in accordance with law; which the learned Arbitrator would consider *expeditiously*.
18. The petition stands disposed-of in the above terms.
19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

APRIL 25, 2024

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