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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 620/2024

MANISHA AGARWAL

.....Petitioner

Through: Mr. Bhushan Kapur, Ms. Aparajita,
Adv.

versus

NINANIYA ESTATES LTD.

.....Respondent

Through: Ms. Surbhi Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

09.10.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Loan Agreement dated 11.03.2015, Suites Buyer Agreement dated 06.04.2015 and Addendum dated 08.05.2017.
2. It is stated that the petitioner transferred an amount of Rs. 1,42,75,000/- as loan to the respondent, wherein the respondent had agreed to pay an amount of Rs. 2,97,396/- per month. The Loan Agreement further stipulated buy-back and sale-back guarantees on the payment of the loan amount.
3. In order to secure the interest of the petitioner, the respondent further executed 3 separate suites buyers agreement for Suits Nos. 502, 803 and 1103 in project named 'Prism Suites'.



4. The arbitration clause is Clause No. 9 of the Loan Agreement which reads as under:-

“9. That all disputes or differences arising between the parties under or in relation to this Loan Agreement, shall be resolved by reference to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be New Delhi only.”

5. Since the respondent defaulted in complying with its obligations, the petitioner invoked arbitration vide legal notice dated 19.02.2024. Hence, the present petition.
6. Ms. Singh, learned counsel appears on behalf of the respondent and states that she does not wish to file a reply. However, she states that as per the last Addendum dated 07.05.2018, the cause of action, if any, arose in favour of the petitioner on 02.04.2019, when allegedly the respondent defaulted in its payment obligations. Hence, the notice dated 19.02.2024 is barred by limitation.
7. I am unable to agree.
8. The Hon'ble Supreme Court ***In Re: Cognizance For Extension Of Limitation, 2022 (3) SCC 117*** has held as under:-

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in



respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

9. The said judgment was clarified in **Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313** wherein it was observed as under:

“84. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27-3-2021. However, in March 2020, the entire world was taken under the grip of the deadly COVID-19 Pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognizance of this unfortunate turn of events, this Court vide order dated 23-3-2020 passed in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] directed the period commencing from 15-3-2020 to be excluded for



the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15-3-2020 to 28-2-2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15-3-2020 would become available from 1-3-2022.”

10. From the above cited judgments, it is clear that the period from 15.03.2020 to 28.02.2022 shall be excluded for the purpose of limitation. The period of limitation as available on 15.03.2020 shall be added to the period of limitation after 01.03.2022.
11. In the present case, assuming the best case of the respondent that the cause of action arose in favour of the petitioner on 02.04.2019, the period of limitation would stop on 15.03.2020, meaning thereby that the petitioner would have consumed about 11 months of its period of limitation leaving a balance period of about 2 years 1 month unexpired period of limitation. If the same is added from 01.03.2022 then the period of limitation will expire on 01.04.2024.
12. In the present case, the notice has been issued by the petitioner on 19.02.2024 and the same, in my view, is within 3 years from the date of cause of action.
13. For the said reasons, the petition is allowed and the following directions are issued:-
 - vii) Mr. J.R. Aryan (Retd. District Judge) (Mob. No. 9958697034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - viii) The arbitration will be held under the aegis of the Delhi



International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

- ix) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - x) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - xi) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - xii) The parties shall approach the learned Arbitrator within two weeks from today.
14. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 9, 2024 / (MS)

Click here to check corrigendum, if any