



2024:DHC:6990



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 850/2024

PNB HOUSING FINANCE LTD

.....Petitioner

Through: Mr. Anish Bhola, Ms. Parul
Mahajan Bhola, Advs. with Ms. Heena
Tangri, AR of petitioner

versus

MS PINKY AGGARWAL HOUSE NO. 132, EAST MODEL
TOWN, GHAZIABAD, UTTAR PRADESH -201010 & ORS.

.....Respondents

Through: Mr. Jaypreet Singh Kohli, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****09.09.2024**

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1. Despite notice having been issued in this case as far back as on 31 May 2024, no reply to this petition has been filed till date.
2. Mr. Jaypreet Singh Kohli, learned Counsel appears for the respondent today and seeks time.
3. Ordinarily, this Court would not have any objection to grant time as sought; however, this is a petition under Section 11(5) of the Arbitration and Conciliation Act 1996¹, and the Supreme Court has held, in *SBI General Insurance Co Ltd v Krish Spinning*², that the court exercising jurisdiction under Section 11(5) or 11(6) is only to

¹ "the 1996 Act", hereinafter
² 2024 SCC OnLine SC 1754



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examine whether there exists an arbitration agreement between the partes and whether the Section 11 petition has been filed within three years of the notice issued under Section 21 of the 1996 Act.

4. I have heard Mr. Anish Bhola, learned Counsel for the petitioner.

5. Mr. Bhola has pointed out that, in the Loan Agreement dated 26 September 2014 executed between the parties, resolution of dispute is envisaged, in clause 10.9, by arbitration. The clause reads as under:

“10.9 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.”

6. Disputes having arisen between the petitioner and the respondents in the context of the above agreement, the petitioner initially issued a demand notice to the respondents on 23 August 2023 and followed it up with a notice under Section 21 of the 1996 Act on 20 February 2024.

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7. There was no response from the respondent.
8. The petitioner has, therefore, approached this Court under Section 11(5) of the 1996 Act seeking reference of the disputes to arbitration.
9. The fact that there is an arbitration agreement between the parties is not disputed by the learned Counsel for the respondents.
10. This petition has, admittedly, been filed within three years of the Section 21 notice.
11. As such, as the parties have not been able to arrive at a consensus regarding arbitration, this Court appoints Ms. Esha Mazumdar, Advocate (9873968037) as the arbitrator to arbitrate on the disputes between the parties.
12. The arbitrator shall be entitled to charge fees as per the Fourth schedule to the 1996 Act.
13. The arbitrator is also requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.
14. This Court has not expressed any opinion on any issue in controversy between the parties. All aspects, whether of maintainability or merits, would be open to be agitated in the arbitral

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proceedings.

15. The petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 9, 2024

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Click here to check corrigendum, if any

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