



2024:DHC:7180



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

+ **ARB.P. 905/2024**

INDIABULLS HOUSING FINANCE LTD.Petitioner

Through: Mr. Vibhu Tripathi, Mr.
Raghav Khanna and Mr. Siddharth Nayak,
Adv.

versus

ANANYA ENTERPRISES AND ORS.Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

17.09.2024

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1. Despite notice and grant of final opportunity to file reply, no reply has been filed.

2. There is no appearance on behalf of the respondents either.

3. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, for reference of the disputes between the parties to arbitration.

4. The dispute arises out of a Loan Agreement dated 28 February 2018 executed between the parties. Article 12 of the said Loan Agreement envisages resolution of disputes by arbitration, and reads

¹ "the 1996 Act", hereinafter



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thus:

“12.1 This Loan Documents is/shall be governed by Indian laws and the courts at New Delhi shall have exclusive jurisdiction relating to any matter/issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary. If any dispute/disagreement/differences ("**Dispute**") arise between the Parties (including any Borrower{s)) during the subsistence of the Loan Documents and/or thereafter, in connection **with, inter alia**, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by IHFL only. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law;”

5. Clearly, the aforesaid said arbitration clause cannot be implemented as it stands in view of the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v HSCC (India) Ltd*², *Bharat Broadband Network Ltd v United Telecoms Ltd*³ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴.

6. As disputes arose between the parties, the petitioner addressed a notice to the respondents under Section 21 of the 1996 Act on 30 April 2024 seeking reference of the disputes to arbitration.

² (2020) 20 SCC 760

³ (2019) 5 SCC 755

⁴ (2021) 3 SCC 103



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7. The respondents did not reply to the aforesaid notice.
8. It is in these circumstances that the petitioner has approached the Court under Section 11(6) of the 1996 Act for appointment of an Arbitrator as parties have not been able to arrive at a consensus in that regard.
9. As the parties have not been able to arrive at a consensus regarding arbitration, the Court has necessarily to step in and refer the disputes to arbitration.
10. It is stated that the claim amount is in the region of ₹ 1.54 crores.
11. Accordingly, the disputes stand referred to arbitration. This Court requests Mr. V P Singh, (Tel: 9830357800), a learned retired Member (Judicial) in the National Company Law Appellate Tribunal, to arbitrate on the disputes between the parties.
12. The learned arbitrator shall be entitled to charge fees as per the Fourth schedule of the 1996 Act.
13. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.



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14. All questions of fact and law shall remain open to be urged before the learned Arbitrator. This Court has not expressed any view thereon.

15. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J

SEPTEMBER 17, 2024

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Click here to check corrigendum, if any