



2024:DHC:5666



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1016/2023****RELIANCE COMMERCIAL FINANCE LTD**PetitionerThrough: Mr. Akhil Sachar and Ms.
Sunanda Tulsyan, Advocate

versus

DR. ASHISH JAIN AND ORS.RespondentThrough: Mr. A.K. Tewari, Advocate for
R1 & 2

Mr. Ujjwal Malhotra, Adv. for R3

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****31.07.2024**

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1. The petitioner is a financier. Respondent 3 is a builder. Respondents 1 and 2, who are husband and wife, were allottees in a project of Respondent 3.

2. A tripartite agreement, to which the petitioner and the respondents are parties and signatories, was executed on 14 March 2015. The agreement contains the following clause, which envisages resolution of disputes by arbitration:

“27. 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 RHFL 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 and the place of Arbitration will be in Delhi.

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Arb. P. 1016/2023

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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.”

3. Ms. Sunanda Tulsyan, learned Counsel for the petitioner submits that the petitioner made certain payments to Respondent 3 on behalf of Respondents 1 and 2. Thereafter, Respondents 1 and 2 are seeking to exit the project. In that event, she submits that Clause 13 of the tripartite agreement entitles the petitioner to receive the payment that has been made, back from Respondent 3.

4. As this gave rise to disputes between the petitioner and the respondents, the petitioner addressed a notice under Section 21 to the respondents on 20 April 2022, seeking reference of the disputes to arbitration. No reply having been received from any of the respondents, the petitioner has approached this court by means of the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking intervention of the Court to appoint an Arbitrator to arbitrate on the disputes.

5. The petitioner submits that the claim of the petitioner against the respondents is in the region of approximately ₹ 2 crores.

6. Mr. Tripathi, who appears on behalf of Respondent 1 and 2, submits that, in connection with the project, his clients have also moved the Consumer Court against Respondent 3. He further submits that the claims of the petitioner are barred by time.



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7. The *lis* which form subject matter of dispute before the Consumer Forum is completely independent and cannot affect the right of the petitioner to invoke Clause 27 of the Tripartite Agreement.

8. Insofar as the plea of limitation is concerned, the Supreme Court has, in its recent decision in ***SBI General Insurance Co Ltd v. Krish Spinning²***, specifically held that the Section 11(6) Court should ideally restrict its consideration to the existence or otherwise of an arbitration agreement between the parties, leaving other issues to be decided by the Arbitral Tribunal, in the interests of preserving arbitral autonomy.

9. In view thereof, the plea of limitation, as urged by the Respondent 1 and 2 would also ideally have to be decided by the Arbitral Tribunal.

10. Mr. Ujjwal Malhotra, learned counsel for Respondent 3, does not object to reference of the disputes to arbitration but submits that all rights and contentions of his client may be kept alive to be urged in the arbitral proceedings.

11. In view thereof, the dispute between the parties is referred to arbitration by Mr. Shlok Chandra, Advocate (Tel: 9999670588).

12. The arbitration would proceed under the aegis of the Delhi International Arbitration Centre (DIAC) and the learned Arbitrator



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would be entitled to fees as per the Schedule of Fees maintained by the DIAC.

13. The learned Arbitrator is also requested to submit the requisite disclosure under Section 12 of the 1996 Act within a week of entering of reference.

14. This Court has not expressed any opinion either on any preliminary objection including the objection of limitation or any other objection that any of the respondents may seek to raise.

15. All issues of fact and law shall remain open for adjudication before the Arbitrator.

16. The petition is disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 31, 2024/yg

Click here to check corrigendum, if any

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