



\$~19

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

+ **O.M.P.(I) (COMM.) 402/2023**

REGCLAN PRODUCTS PRIVATE LIMITED Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. with
Mr. V. S'costa, Ms. Astha Ojha, Mr.
Himanshu Sharma, Advs.

versus

PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED

..... Respondent

Through: Mr. Arvind Nayar, Sr. Adv. with Mr.
Samir Malik, Mr. Anand Singh
Sengar, Mr. Krishan Kumar, Advs.
for R-1

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

07.02.2024

%

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs.
2. Both the learned senior counsel for the parties submit that the Letter of Intent (LOI) executed at New Delhi dated 11.09.2023 between the parties contains an arbitration clause-21 which reads as under:

"21. Governing Law and Jurisdiction - This LOI and any disputes arising out of or in connection with this LOI shall be governed by Indian laws.

Any dispute arising out of or in relation to or in connection with this LOI shall be resolved by arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time).



The Parties shall appoint a sole arbitrator (by mutual consent). The seat and venue of arbitration shall be New Delhi, India and the language of the arbitration shall be English.

The decision of the arbitral tribunal shall be binding on all the Parties to the dispute.

The arbitration award of the arbitral tribunal shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The tribunal shall state their reasons for their findings in writing. The Parties agree to be bound thereby and to act accordingly.

The costs of arbitration and the manner of bearing such costs shall be determined by the tribunal.

Subject to the above, the courts in Delhi, India shall have exclusive jurisdiction over all matters relating to or arising under this LOI."

3. Both the learned senior counsel for the parties very fairly stated that since there is admittedly an agreement between the parties and an arbitration clause and a dispute has arisen the matter may be referred to the arbitration. Both the learned senior counsel for the parties have submitted that the present petition may be converted into Section 11 of the Arbitration and Conciliation Act. It has further been submitted that the present petition may also be converted into Section 17 of the Act and may be directed to place before the learned Arbitrator for adjudication of the same in accordance with the law.
4. It is pertinent to mention here that the order dated 08.01.2024, the following order was passed:

"As per office report, respondent No.2/Ambience Hospitality Private Limited has not been served and the report is



still awaited.

Learned senior counsel for the petitioner submits that they have filed an affidavit of service and, as per the affidavit, the address on which courier was sent is a barren land with no security guards.

Learned senior counsel for the petitioner submits that they have no other address of the respondent No.2. However, the Respondent No.2 has been served by way of e-mail on the Email ID as available on the website of Ministry of Corporate Affairs (MCA).

Learned Senior Counsel for the Respondent No.1 submits that the property in question i.e. “The Palms Town & Country Club, located at B-Block, Sushant Lok, Phase- 1, Gurugram, Haryana” has already been vested in favour of the proposed Respondent No.2 as recorded in para-10 of the order dated 11.12.2023. Learned senior counsel further submits that therefore no injunction order can be passed against the Respondent No.1.

Learned senior counsel for the petitioner submits that in view of the statement made in the Court by the Respondent No.1, an order may be passed against the respondent No.2 to not to create any third party interests.

Let the petitioner file an affidavit saying that they do not have any other address of the respondent No.2.

In the meantime, till the next date of hearing, Respondent No.2 is restrained for creating any third party interest on the land admeasuring 2.27 5+ 1.977 acres total area 4.25 acres, located at B-Block, Sushant Lok, Phase- 1, Gurugram, Haryana.

List on 07.02.2024.”

5. In pursuant to the above order, the petitioner has filed an affidavit of service regarding respondent No.2. In the affidavit of service, it has been submitted that the petitioner attempted to serve respondent No.2



via courier to the address which has been secured from the duly delivered demand notice issued under Section 13(2) and Possession Notice issued under Section 13 (4) of the SARFAESI Act by the respondent No.1 itself. It has further been stated in the affidavit of service that a similar address of respondent No.2 is available on the MCA records as their registered address.

6. Learned senior counsel for the petitioner has also submitted that the e-mail has been sent to respondent No.2 at the address obtained from the MCA Website and the same has not bounced back. Learned senior counsel on instructions states that in the affidavit of service, it has specifically been stated that the deponent has downloaded the information on her computer which is regularly used by her in the ordinary course of business.
7. Considering the fact that in view of the affidavit of service filed on behalf of the petitioner with the consent of both parties, the present petition is disposed of with the following directions:
 - i) Justice G.S. Sistani, Former Judge of High Court (mobile No.9871300034) is appointed as learned Arbitrator is appointed as an Arbitrator to adjudicate the disputes between the parties.
 - ii) The order dated 08.01.2024 shall remain in operation only till the disposal of the application under Order 17 of the Act is decided by the learned Arbitrator.
 - iii) The fee shall be decided by the learned Arbitrator in consultation with the parties.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.



v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned arbitrator within two weeks from today.

8. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 7, 2024

Pallavi