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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(MISC.)(COMM.) 831/2024**
PNB HOUSING FINANCE LTD.Petitioner

Through: Mr. Niraj Kumar, Mr. Kamil Khan and
Mr. Nikhil Narayan Arora, Advocates.

versus
MR.PRAFULLA SUBHASHCHANDRA BHAT & ORS.
.....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER
18.10.2024

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I.A. 42518/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

O.M.P.(MISC.)(COMM.) 831/2024

3. The present petition seeks re-fixation/reduction of the arbitrator's fee in the context of the fact that the respondent in the arbitration proceedings have been proceeded *ex-parte*.
4. It is noticed that the fee sought to be charged by the learned Arbitrator is as per the IVth Schedule of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*'). It has been affirmed in **ONGC v. Afcons Gunanusa JV** 2022 SCC OnLine SC 1122 that in the absence of any contrary agreement between the parties and the Arbitrator, the default position is that the IVth Schedule shall be applicable, and the fee payable to the Arbitrator shall be computed accordingly. The relevant observation in **ONGC v. Afcons**



Gunanusa JV(supra) are reproduced as under:-

*“129. Conscious and aware as we are that : (i) Arbitration proceedings must be conducted expeditiously; (ii) Court interference should be minimal; and (iii) Some litigants would object to even a just and fair arbitration fee, we would like to effectuate the object and purpose behind enacting the model fee schedule. **When one or both parties, or the parties and the Arbitral Tribunal are unable to reach a consensus, it is open to the Arbitral Tribunal to charge the fee as stipulated in the Fourth Schedule, which we would observe is the model fee schedule and can be treated as binding on all.** Consequently, when an Arbitral Tribunal fixes the fee in terms of the Fourth Schedule, the parties should not be permitted to object the fee fixation. It is the default fee, which can be changed by mutual consensus and not otherwise.”*

(emphasis supplied)

5. After some hearing, learned counsel for the petitioner confines himself to seeking that the petitioner be granted the liberty to urge before the learned sole Arbitrator that the amount paid by the petitioner towards the arbitral fees and costs be also permitted to be made part of the amount awarded (if any) to the petitioner. Needless to say, the petitioner would be at liberty to urge the same before the learned Sole Arbitrator. The learned sole Arbitrator shall consider the same in accordance with law and as contemplated in Section 31A of the A&C Act.

6. In view of the aforesaid, the present petition is disposed of with the aforesaid liberty to the petitioner.

SACHIN DATTA, J

OCTOBER 18, 2024/at