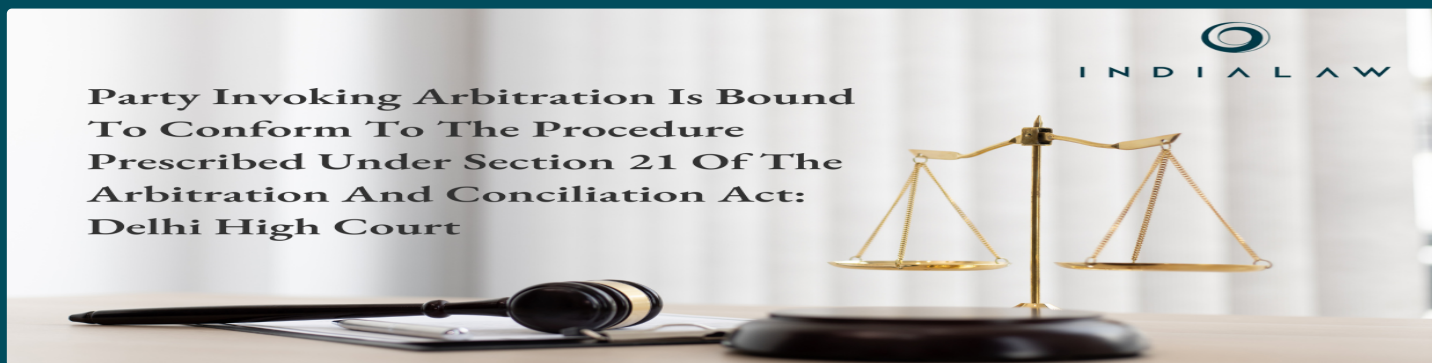




ARBITRATION AND CONCILIATION

Party Invoking Arbitration Is Bound To Conform To The Procedure Prescribed Under Section 21 Of The Arbitration And Conciliation Act: Delhi High Court

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The Delhi High Court (“**the HC**”) in its recent judgment passed in the matter of *Amit Guglani & Anr. Vs. L & T Housing Finance Ltd. & Anr.*^[1] held that compliance with section 21 of the Arbitration and Conciliation Act, 1996 (“**the Act**”) is a binding obligation and that issuance of an invocation notice is imperative prior to approaching the court for appointment of arbitrator(s).

Essential Facts

The Petitioner approached Raheja Developers Ltd. (“**the Respondent No.2/Developer**”) for booking a unit in its project under construction in Gurgaon. The Petitioners, pursuant to a construction linked option, approached L&T Housing Finance Ltd. (“**the Respondent No. 1/Lender**”) for loan of Rs. 67 Lakhs.

This arrangement was captured in a Tripartite Agreement (“**TA**”) and a separate Home Loan Agreement (“**HLA**”) executed by and between the Petitioners and the Respondents. Pursuant to the said Agreements, the Respondent No. 1 disbursed the sanctioned loan amount.

It is germane to mention at this juncture that as per the arbitration clause contained in the TA, the courts in Delhi have the exclusive jurisdiction. Whereas, in case of the HLA, the exclusive jurisdiction is conferred on the courts in Calcutta.

Numerous disputes arose between the Petitioners and the Respondents *inter alia* principally with respect to revision of the basic prime lending rate (“**BPLR**”) of the Petitioner’s home loan from 17.75% to 18.10% by the Respondent No. 1. As disputes remained unresolved, the Petitioner subsequently invoked arbitration as per the clause contained in the TA and approached the HC by filing a petition for appointment of the arbitrator.

Submissions of the parties

At the outset, the counsel for the Respondent raised a preliminary objection that the Petitioner has erroneously invoked arbitration as per the TA to submit disputes to the jurisdiction of the HC. Further, based on the covenants relating to rate of interest, tenure of instalments, BPLR, which solely concern the HLA, the counsel contended that, the fact that no relief has been sought against the Developer, makes it perspicuous that no disputes have arisen under the TA.

At the further outset, the counsel for Respondent highlighted that the Petitioner has acted in contravention to Section 21 of the Act by not serving invocation notice to the Respondent on the pretext that loan agreement provided for unilateral appointment and hence, non-compliance to the said section 21 of the Act cannot be dispensed with on the said ground. To fuel his contentions, the counsel placed reliance on many judgments *inter alia* namely *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*^[2], *Shriram Transport Finance Company Limited v. Narender Singh*^[3]; *Haldiram Manufacturing Co. Ltd. v. SRF International*^[4].

Justifying the revision made by the Respondent No. 1 in the BPLR, the counsel for the Respondent No. 1 held that the same was a mere technical error which was subsequently corrected by addressing a letter. Consequently, it cannot be interpreted as illegal or arbitrary.

In support of the Petitioner, while placing reliance on the TA, the counsel counter argued that, it is apparent that the Respondent No. 2 is obligated to make payment towards pre-EMIs to the Respondent No. 1 for a period contemplated under the TA. Further, several covenants such as those relating to the rate of interest and BPLR stipulated in TA are in tandem with the HLA. Therefore, the Petitioner has not erred in invoking Clause 27 under TA and the same is justified on account of interrelatedness between both, the TA and the HLA.

The counsel for the Petitioner while objecting to Respondent No.1’s submission regarding non-issuance of invocation notice contended that as the arbitration clause under the TA allowed unilateral appointment of the arbitrator by the Lender, issuing an invocation notice would be an empty formality and thus, could be dispensed with. In support of his contention, the counsel for the Petitioner relied on the judgments namely, *Brilltech Engineers Private Limited v. Shapoorji Pallonji and Company Private Limited*^[5], *Universal Consortium of Engineers Pvt. Ltd. v. Kanak Mitra and Another*^[6].

Further, the fact that the Petitioners informed the Respondent No.2 via email about the intervention of the third-party to address issues subsisting between the parties, would tantamount to sufficient compliance.

HC’s Ruling and key takeaways

The Court while observing that the TA being a chief agreement, the Petitioners have rightly invoked arbitration clause therein. The HC further elucidated that both agreements are interdependent, considering the payment of pre-EMIs/EMIs and the liabilities of the Petitioners and Respondent No.2 are synchronised under TA and HLA.

Propelling the aforesaid, the Court held that when disputes under two connected agreements have different arbitration clauses, the disputes should be resolved as per the arbitration clause contained in the chief/primary agreement and that the arbitration clause contained therein should be critical to that contained in the secondary agreement.

The HC while dealing with the predicament of absence of notice under Section 21 of the Act, held that upon bare perusal of the said provision, issuance of arbitration invocation notice is prescribed and therefore imperative. The said provision being mandatory in nature does not exempt a party from adhering to the prescribed even when an agreement provides for unilateral appointment of the arbitrator. The Court held that for a communication to constitute a valid notice under Section 21 of the Act, it must at the very least, refer to the arbitration clause in the agreement. On account of the aforesaid reasons, the HC, accordingly, dismissed the petition.

[1] ARB.P. 1317/2022 and I.A. No. 19286/2022

[2] (2017) SCC OnLine Del 7228

[3] 2022 SCC OnLine Del 3412

[4] 2007 SCC OnLine Del 457

[5] 2022 SCC OnLine Del 4422

[6] 2021 SCC OnLine Cal 1425