

\$~OS-2

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

+ ARB. A. (COMM.) 13/2017 & IA No.6071/2017 (stay)

DEWAN HOUSING FINANCE CORPORATION
LIMITED

.... Petitioner

Through Ms.Shweta Kapoor, Adv.

versus

M/S.PROTO INFRASTRUCTURE AND TECHNOLOGIES LTD.

..... Respondent

Through Mr.Pankaj Garg, Mr.Milind Garg and
Ms.Mansi Batra, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **24.05.2017**

1. Present petition is filed under section 37(2)(b) of the Arbitration and Conciliation Act, 1996 seeking to set aside the order dated 29.01.2017 passed by the learned Arbitrator.
2. The petitioner granted to the respondent two loan facilities of Rs.1,75,000/- and Rs.1,50,000/-. As per the petitioner there are defaults done by the respondent. The petitioner has issued notices under section 13(2) of the SARFAESI Act, 2002. Steps have also been taken under section 14 of the said Act before the concerned CMM for appointment of a Receiver. The CMM has allowed the application and receiver was scheduled to take possession on 30.01.2017.
3. The respondents have appointed an Arbitrator, namely, Shri Vivek Gaur. The said Arbitrator has passed the impugned order dated 29.01.2017 directing the parties to maintain status quo.
4. The case of the petitioner is that under the Arbitration Clause the

Arbitrator is to be appointed by the petitioner. Petitioner has accordingly appointed Shri Avnish Tyagi as an Arbitrator. The petitioner also filed a petition under section 11 of the Act seeking to terminate the appointment of the Arbitrator appointed by the respondent. This court on 27.3.2017 dismissed the petition of the petitioner leaving it open to the petitioner to avail other remedies that may be available to it in accordance with law. The relevant arbitration clause is article 11 of the Home Loan Agreement.

5. I have heard arguments of learned counsel for the parties. Learned counsel for the petitioner has vehemently argued that proceedings under SARFAESI Act cannot be stalled by an Arbitrator by passing the impugned order.

6. Learned counsel for the respondent on the other hand has submitted that out of the loan amount of Rs.2.5 crores, Rs.4,40,00,000/- have already been paid to the respondent. It is stated that the petitioners are needlessly adding unnecessary charges and are not giving the details.

7. After some arguments, fortunately with the intervention of learned counsel for the parties, the parties have agreed to terminate the appointment of both the Arbitrators appointed by the parties. Ordered accordingly.

8. Parties have agreed that the matter be referred to the Delhi International Arbitration Centre for adjudication of all the disputes between the parties.

9. Learned counsel for the respondent on instructions from the respondent who is present in court also states that he will pay a sum of Rs.50 lacs in three monthly instalments starting from today to the petitioner. This payment will be made without prejudice to the rights and contentions of the respective parties.

10. The SARFAESI proceedings shall remain stayed for the duration of the arbitration proceedings. However, the petitioner is at liberty to approach the learned Arbitrator under section 17 of the Act after a lapse of three months for modification, variation or revocation of the said order, as per law.

11. I appoint Ms.Ravinder Kaur, (Mobile No.9910384660) retired District and Sessions Judge, Delhi as an Arbitrator to adjudicate the dispute between the parties. The Arbitrator will function under the aegis of Delhi International Arbitration Centre. In view of the above, the present petition stands disposed of. SARFAESI proceedings shall remain stayed for a period of three months from today.

12. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MAY 24, 2017

n