

Arbitration Case No. 8 of 2022

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Arbitration Case No. 8 of 2022 (O&M)

Date of decision: 2nd February, 2023

Indian Overseas Bank

Petitioner

Versus

Bank of Baroda and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rakshit Gupta, Advocate for the petitioner.
Mr. Vishal Ahuja, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The brief facts are that the property in question was mortgaged by M/s A. K. Karyana Store in 2011 with petitioner for availing loan facility. In 2015, the proprietor of M/s A. K. Karyana Store transferred the property to Prem Singh, proprietor of M/s K. B. Feeds Mills. The said property was again mortgaged with Bank of Baroda (hereinafter referred to as 'the respondent'). The petitioner declared the account of M/s A. K. Karyana Store as Non-Performing Asset in 2016 and thereafter started proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') for taking physical possession of the property under Section 14 of the SARFAESI Act. The District Magistrate vide order dated 4.1.2018 ordered police help for taking possession of the property. The petitioner filed an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal which was dismissed on 16.8.2018 as

Arbitration Case No. 8 of 2022

not maintainable. Thereafter, the petitioner approached this court by way of CWP No. 18056 of 2020 challenging the order dated 4.1.2018. The petition was dismissed with liberty to approach the Civil Court. On 28.4.2021, the petitioner served a notice on the respondent for appointment of an arbitrator.

Learned counsel for the petitioner relies upon Section 11 of the SARFAESI Act to submit that there is a dispute between banks relating to securitization and non-payment of the amount due and has to be settled through arbitration. He further submits that the respondent on its own had auctioned the property in question and kept the entire amount with it.

Learned counsel for the respondent opposes the prayer and submits that as per the order of the District Magistrate, the property was in joint possession. The petitioner had not taken any effective steps for three years, hence the respondent auctioned the property and offered 50% payment which was not accepted by the petitioner. Ultimately, the auction bidder backed out and his money was returned.

The scope of interference at the stage of Section 11 of the Act is very limited. Reference in this regard is made to the decision of the Supreme Court in ***Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1.***

From the contentions of learned counsel for the parties, it is evident that *prima facie* there is a dispute between the parties with regard to the property which was mortgaged twice and as to who is to auction the property and how consideration is to be apportioned.

As per Section 11 of the SARFAESI Act, the disputes inter-se the banks are to be resolved through arbitration.

The petition is disposed of by appointing Mr. Justice Ram Chand Gupta, retired Judge of this Court, #215 CP, Sector 4 MDC, Panchkula as the sole arbitrator subject to declaration to be made by him under Section 12 of the Act with regard to independence and impartiality to settle the dispute between the parties.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

Arbitration Case No. 8 of 2022

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Since the main case has been disposed of, pending applications, if any, stand disposed of.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

2nd February, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |