

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.265 OF 2024

IDBI Trusteeship Services Limited ... Petitioner

V/s.

Shashwati Realty Private Limited ... Respondent

Ms. Chitra Rentala a/w Richa Bharti a/w Advait Shukla i/by Trilegal for the
Petitioner.

Mr. Yash Momaya a/w Zaid Mansuri i/by DSK Legal for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 16TH AUGUST 2024

P.C. :

1. The captioned Commercial Arbitration Petition arises out of a
Debenture Trust Deed dated 7th June 2018 read with Amendment Agreement
dated 9th June 2022 executed between *inter alia* the Petitioner and the
Respondent whereby the Petitioner was appointed as the Debenture Trustee in
respect of 600 fully secured, unrated, unlisted, redeemable, taxable, freely
transferable rupee-denominated non-convertible debenture (NCDs) having a
face value of Rs.10,00,000/- issued by the Respondent in multiple tranches,
aggregating to an amount of Rs.60,00,00,000/-, which was to be utilized for

inter alia the construction of the project named ‘Pashmina Brookwoods’ project developed on the part and parcel of land admeasuring 7 acres and 4 gunthas of Survey No.22/1, 22/2 and part of 22/3 of Kammasandra Village, Bidarahalli Hobli, Bangalore East Taluka, Bangalore District, situated at Old Madras Road, Budhigere, Bengaluru (‘project’).

2. As per the terms of the Debenture Trust Deed, the Respondent was obligated to repay the principal amount and pay interest thereon. The Respondent had created various securities in order to secure the payment/repayment of the amounts due under the Debenture Trust Deed including an escrow arrangement for depositing the amounts received from sale of units in the project in an escrow account.

3. It is the Petitioner’s case that not only has the Respondent failed to honour its payment obligations, but also failed to comply with various other terms of the Debenture Trust Deed including depositing any amounts received from the sale of units in the project in the designated escrow account, i.e., the Project Escrow Account bearing No.57500000225744 of the Respondent with HDFC Bank, Lower Parel Branch, Mumbai, in accordance with the Debenture Trust Deed and the escrow accounts agreement dated 15th July 2018 executed between the Issuer, ITSL and HDFC Bank Limited.

4. In view of the aforesaid, the Petitioner had filed the Petition under Section 9 of the Arbitration & Conciliation Act, 1996 seeking various reliefs.

5. Learned Counsel appearing on behalf of the Respondent today disputes that the outstanding amount was approximately Rs.60,00,00,000/-. He submits that the Respondent has after June, 2023 made payments of a sum of approximately Rs.33,00,00,000/- to the Petitioner and therefore the outstanding are far less. There is however no dispute to the fact that there are outstanding amounts due and payable to the Petitioner under the Debenture Trust Deed. He thus, on instructions, states that the Respondent is willing to submit the disputes and differences that have arisen between the parties to arbitration. Parties have by consent agreed to appoint Mr. Rohaan Cama, Advocate as an Arbitrator.

6. Hence, I appoint Mr. Rohaan Cama, Advocate to act as the Sole Arbitrator to decide the disputes and differences between the parties on the following terms :-

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Rohaan Cama, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.
- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr. Rohaan Cama, Advocate**

Address Room No.17-18, 1st Floor,
Islam Building, 46-48 Veer
Nariman Road, Fort, Mumbai
400 001.

Mobile 9821067945

Email rohaancama@hotmail.com

- (c) Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.

- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall not be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

7. Learned Counsel for the Respondent, on instructions, undertakes that the Respondent shall not sell any flats contrary to the mechanism as set out in the Debenture Trust Deed. He also, on instructions, submits that all the sale proceeds from the flats, if any, shall be deposited into the Project Escrow Account bearing No.57500000225744 with HDFC Bank, Lower Parel Branch, Mumbai.

8. Given the fact that today there is an admitted outstanding amount, which is in excess of Rs.30,00,00,000/-, I also deem it fit in addition to the undertaking given by Learned Counsel for the Respondent that the Respondent

to file a disclosure on an Affidavit, before the Learned Arbitrator, disclosing the details of the units in the project which were marked in favour of the Petitioner under the Debenture Trust Deed, details of other transaction documents which have been sold out or transferred to any other person and/or entity in any manner as also the details of all the amounts received from such sale proceeds.

9. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)