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

\+ ARB.P. 317/2024

PNB HOUSING FINANCE LTD .....Petitioner

Through: Mr. Anish Bhola, Ms. Parul Bhola, Advs. Ms. Heena Tangri, AR

versus

PARAMJEET SINGH ARORA & ORS. .....Respondents

Through: Mr. Sethi, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **01.10.2024**

1. Mr. Sethi, learned counsel appears for the respondents and Mr. Karan Gupta, learned counsel is discharged.

2. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator to adjudicate the dispute between the parties.

3. The facts are that the respondent Nos. 1- 3 had approached the petitioner seeking a credit facility for purchase of immovable properties bearing no. Building A, 8th Floor, Flat Nos. 801 & 802, Nirmaann Serrenne, S No. 24/1/1 behind Corinthian Club Resort, Pune.

4. Based upon the representations made by the respondents, the petitioner agreed to grant the loan facility to respondents. The said loan facility was availed by the respondents in the form of a housing loan under the scheme of Residential Home Purchase Loan for an amount of Rs

71,00,000/-, as more particularly mentioned in the sanction letter dated 12.02.2019.

5. On sanction of the loan, the respondent filed all the requisite forms and also created equitable mortgage by deposit of Title Deeds dated 15.02.2019. Subsequently, the loan facility was granted to the respondents and the amount of Rs 71 lakhs was disbursed *vide* Loan No. HOU/KNDW/0219/646715.

6. Under the said loan arrangement, respondent No. 1 was the principal borrower and respondent Nos. 2- 3 were the co-borrowers. The said loan was repayable at the interest rate of 9.80% per annum to be paid in 180 monthly installments of Rs 75,431/- each and after revision of interest on 11.06.2023, the interest @12.65% per annum was payable.

7. Since the respondent failed to adhere to the terms of the loan, the petitioner initiated SARFAESI proceedings and the same are still pending adjudication.

8. Thereafter, the petitioner issued a notice invoking arbitration *vide* legal notice dated 21.11.2023.

9. The arbitration clause is contained in the General Terms and Conditions, being clause 10.8.

10. I have heard learned counsel for the parties.

11. This court has already taken a view in the judgment dated 14.05.2024 passed in ARB.P. 203/2023 titled "*Aditya Birla Finance Limited vs. M/S Anoop Oswal Hosiery and Ors.,"* wherein the court *inter alia* held as under:-

> *"17. In the present case, the petitioner is not notified as a financial institution in terms of Section 2(h) of the RDB Act nor is a bank or a banking company within the meaning of Sections 2(d) and 2(e) of the*

RDB Act. Thus, the petitioner is ineligible to constitute proceedings and avail the resolution mechanisms stipulated under the RDB Act with respect to approaching the Debt Recovery Tribunal ("DRT") for adjudication of its claim vis-a-vis the respondent. The petitioner, by initiation of SARFAESI proceedings, has only sought to secure the equitable mortgage of the immovable property made in its favour. The judgment of Hon'ble Supreme Court in M.D. Frozen Foods Exports Pvt. Ltd. and Ors. (supra) in this regard held as under:-

> *"33. SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum.*
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> *34. We are, thus, unequivocally of the view that the judgments of the Full Bench of the Orissa High Court in Sarthak Builders Pvt. Ltd. v. Orissa Rural Development Corporation Limited MANU/OR/0110/2014, the Full Bench of the Delhi High Court in HDFC Bank Limited v. Satpal Singh Bakshi (supra) and the Division Bench of the Allahabad High Court in Pradeep Kumar Gupta v. State of U.P. MANU/UP/0209/2009 : AIR 2010 All 3 lay down the correct proposition of law and the view expressed by the Andhra Pradesh High Court in M/s. Deccan Chronicles Holdings Limited v. Union of India MANU/AP/0060/2014: AIR 2014 Andhra Pradesh 78 following the overruled decision of the Orissa High Court in Subash Chandra Panda v. State of Orissa MANU/OR/0069/2008: AIR 2008 Ori 88 does not set forth the correct position in law. SARFAESI proceedings and arbitration proceedings, thus, can go hand in hand."*

18. In addition, the Coordinate Bench of this court in the matter of

Aditya Birla Finance Limited in ARB.P. 251/2023 has held as under:

> *"11. Moreover, the Supreme Court's decision in M.D. Frozen Foods Exports (supra) has held that recourse to SARFAESI Act and Arbitration Act can co-exist. Although the SARFAESI Act is a special legislation pertaining to enforcement of securities, this view taken by the Supreme Court supports the contention that parallel proceedings do not inherently nullify the arbitral process. Thus, even if the Petitioner is said to have acquiesced to the jurisdiction of the Civil Court, this in itself does not preclude the possibility of pursuing arbitration, as there can be different sets of claims in the two proceedings, notwithstanding the overlap."*

19. For the said reasons and relying on the above observation, I am of the view that despite having initiated proceedings under SARFAESI, the present petition for adjudication of claims before the Arbitral Tribunal is maintainable."

12. The aforesaid judgment holds that in case the petitioner is not notified as a financial institution in term of 2(h) of Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) nor is a 'bank' or 'banking company' within a meaning of Section 2(d) and 2 (e) of RDB Act, 1993, then the petitioner is ineligible to avail resolution mechanism under RDB Act, 1993 before the Debt Recovery Tribunal and the adjudication of claims before the Arbitral Tribunal is maintainable. Further, it held that despite initiation of proceedings under SARFAESI, proceedings before the arbitrator can also be invoked.

13. In the present case, the petitioner is a company incorporated under the Companies Act, 1956 and is registered with the National Housing Company (NHB) in terms of section 29A of the National Company Act, 1987. It is

also a notified company under the SARFAESI Act, 2002 (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002).

14. Even though, the petitioner company is engaged in the business of providing credit/loan facilities and accepting term deposits, however the same is not notified as a financial institution in term of 2(h) of Recovery of Debts and Bankruptcy Act, 1993 Act nor is a banking company within a meaning of Section 2(d) and 2 (e) of the Recovery of Debts and Bankruptcy Act, 1993. The petitioner submits that it is neither a securitization company nor a reconstruction company. Hence, the petitioner is ineligible to approach DRT under the RDB Act. Therefore, the present petition under section 11 of the Arbitration and Conciliation Act,1996 can be entertained.

15. In the present case, the respondents have filed a reply, wherein they have stated that the petitioner has wrongly financed the loan. They have also stated that they have registered an FIR against the builder/ developer, for purchase of the property for which the loan was availed, as the builder has allegedly cheated the respondent.

16. However, in the reply filed by the respondents there is no denial of executing the loan documents and the arbitration clause contained therein, being Clause 10.8 of General Terms and Conditions of the Loan Agreement, which reads as under:-

> *"**10.8 Arbitration***
> *Any and all disputes, claims, differences arising out of or in connection with the Loan Documents and or the performance of the Loan Documents shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the PNBHFL and the award, thereupon, shall be binding upon the Parties. The place*

of arbitration shall be in Delhi or any other place as arbitrator may decide and shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The proceeding of Arbitration Tribunal shall be conducted in English language. Each party has to bear cost of representing its case before the Arbitrator. The cost of arbitration, including fees 'and expenses of the arbitrator, shall be shared equally by the Parties, unless the award otherwise provides.

Subject to this Article herein, the Borrower(s) further agrees that all claims, difference and disputes, arising out of or in relation to dealings/transaction made in pursuant to the Loan Documents including any question of whether such dealings, transaction have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only."

17. For the said reasons and despite initiation of proceedings under SARFAESI, the present petition for appointment of arbitrator is maintainable and is allowed. The following directions are issued in this regard:-

i) Mr. Rohan Yadav, Adv. (Mob. No. 9811546760) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

18. The order was pronounced on 01.10.2024, however in view of some clarification required, the matter was listed on 21.10.2024 and thereafter the order has been released.

JASMEET SINGH, J

OCTOBER 1, 2024/NG
(Corrected and released on 21.10.2024)