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

+ **ARB.P. 523/2024**

PNB HOUSING FINANCE LIMITED

....Petitioner

Through: Ms. Jasmine Damkewala, Adv.

versus

**PARISHRAM ELECTRONIC HUB AND COOLING SOLUTION
& ORS.**

.....Respondent

Through: Mr. Mohit Chaurasia, Ms. Dolly Nair,
Ms. Suchetan, Ms. Ashima Kalra,
Mr. Sandeep Agarwal, Ms. Sangeeta
Kataria, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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11.09.2024

1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 and seeking appointment of a sole arbitrator.
2. The facts are that the respondents approached the petitioner to avail a non-housing loan and in this regard, a sanction letter was executed in favor of Respondents for a sum of Rs 4,20,20,000/-. Subsequently, the petitioner and the respondents entered into a loan agreement on 14.11.2019. The said agreement contains the arbitration clause being clause No. 10.8 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.”

3. In view of the default, respondents provided immovable property i.e., showroom comprising of Ground Floor and Basement, Wing A, CTS No 852 Sr. No 672/7/1 Dew Drop Villa, Swami Vivekananda Road, Bibawewadi, Pune, Maharashtra – 411037 (“property”) as collateral. Thereafter, the petitioner issued a demand notice against the respondents under section 13(2) of the SARFAESI Act, 2002.
4. An application also came to be filed under section 14 of the SARFAESI Act, 2002 before the Ld Additional District Magistrate for taking possession of the aforesaid property. Ld. Additional District Magistrate allowed the said application of the petitioner vide Order dated 10.08.2022 in CC No: SR/3135/2022 and appointed Court Commissioner for taking possession of the secured assets.
5. Subsequently, the respondents approached the petitioner again for a



one time settlement (“OTS”), however, the same could not be fructified as the respondent could not adhere to the payment timelines.

6. The petitioner invoked arbitration *vide* notice dated 25.10.2023.

7. Mr. Chaurasia, learned counsel for the respondent states that there are disputes with regard to the OTS as well as the sale of the property of the respondent.

8. He draws the attention of the Court to an e-mail of 18.06.2024 and states that the attached property of the respondent was sold and the petitioner have received a sum of Rs. 3.92 crores from the sale consideration and as of today, the only amount to be paid is about Rs 97 lakhs.

9. I have heard learned counsels for the parties.

10. I am of the view that the E – mail dated 18.06.2024 along with the issue regarding the amount due and payable to the petitioner is an issue which the learned Arbitrator will decide and take into consideration.

11. The issue that whether in view of SARFAESI proceedings the present petition will lie or not (***M/s Diamond Entertainment Technologies Pvt. Ltd & Ors.. vs. Religare Finvest Ltd.***, 2023/DHC/000156 and ***M/s Fermina Developers Private Limited vs. Indiabulls Housing Finance Limited***, 2022/DHC/005642) need not detain me as the proceedings under SARFAESI Act has already been concluded and the property has been sold. After conclusion of the said proceedings, there are still amounts due and payable by the respondent to the petitioner which are being sought to be recovered through these arbitration proceedings.

12. For the said reasons, the petition is allowed and disposed of with the following directions:

i) Mr. Shyam Sharma, Adv. (Mob. No. 9810153965) 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, including the fact of whether the petitioner has committed any illegality and made the building contrary to the sanction plan in an illegal manner is left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

SEPTEMBER 11, 2024/sp

Click here to check corrigendum, if any