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

+ **ARB.P. 698/2024**

PNB HOUSING FINANCE LTD.

.....Petitioner

Through: Mr. Niraj Kumar and Mr. Nikhil
Narayan Arora, Advocates.

versus

MR. RAJIV RANJAN & ORS.

.....Respondents

Through: Mr. Siddharth Tewari, Ms.
Aakanksha Tewari and Mr. Amol
Chaudhary, Advocates for
Respondent Nos.1 and 2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

16.12.2024

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate the disputes which have arisen between the parties under a Loan Agreement.

2. The facts of the case reveals that the Respondents No.1 & 2 had approached the Petitioner requesting for sanction of loan of Rs.98,91,800/- towards purchase of a flat being Apartment No.02, Tower No.20, Ground Floor (Size 2521 sq.ft), Lotus Panache, Plot No.GH-005, Sector-110, Noida Expressway, G.B Nagar, U.P-201301 (hereinafter referred as "*the Property in question*"), which was being developed by the Respondents No.3 & 4 herein. It is stated that Respondent No.3 made a provisional allotment of the property in question in favour of Respondent No.4 on 30.04.2017. It is



stated that Respondents No.3 & 4 entered into an Apartment Buyer Agreement dated 05.06.2017. It is stated that the Respondent No. 1 had entered into an Agreement for Sale dated 26.08.2017 with Respondent No.4 for purchase of the property in question. It is stated that *vide* Sanction Letter dated 30.08.2017, the Petitioner herein sanctioned a housing loan facility for a sum of Rs.98,81,800/- in favour of the Respondents No.1 & 2 herein. It is stated that Respondents No.1 & 2 herein, in order to secure the repayment of the housing loan, executed various documents with the Petitioner being Loan Agreement, Sanction Letter, Most Important Terms and Conditions, General Terms and Conditions and other Finance Documents. It is stated that Respondents No.1 & 3 also executed a Tri-Partite Agreement dated 02.09.2017 with the Petitioner whereby the Respondent No.3 agreed not to handover the actual and physical possession of the mortgaged property to the Respondents No.1 and 2 without the prior written permission of the Petitioner. It is stated that the Respondents No.1 & 2 defaulted in making the payments towards the loan amount and their loan account was classified as an NPA on 30.04.2019. It is stated that a Demand Notice/Loan Recall Notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued by the Petitioner to the Respondents No.1 & 2 herein on 25.02.2023 directing the Respondents No.1 & 2 to deposit Rs.1,50,70,961/- towards the loan amount along with the interest accrued on the loan amount.

3. It is stated that the Petitioner initiated Arbitration proceedings in terms of Clause 10.7 & 10.8 of the GTC and unilaterally appointed a Sole Arbitrator in 2018. The Sole Arbitrator passed an award dated 05.03.2019 in



favour of the Petitioner herein.

4. It is stated that in terms of the Judgment of the Apex Court in Perkins Eastman Architects DPC vs. HSCC (India) Ltd., **2019 SCC OnLine SC 1517**, which prohibits unilateral appointment of an Arbitrator, the award dated 05.03.2019 has become void and, therefore, the Petitioner once again invoked arbitration by sending a notice dated 01.11.2023 to the Respondents No.1 & 2 under Section 21 of the Arbitration Act. It is stated that since the Respondents No.1 & 2 have not replied to the Notice under Section 21 of the Arbitration Act, the Petitioner has approached this Court by filing the present Petition.

5. It is stated by the learned Counsel for the Respondents No.1 & 2 that Respondents No.1 & 2 have not paid the loan amount primarily because they have not got the possession of the property in question. It is stated that Respondent No.3 is under Corporate Insolvency Resolution Process.

6. It is pertinent to mention that on 06.09.2024 learned Counsel for the Petitioner sought permission to delete Respondents No.3 & 4 from the array of parties. Accordingly, an amended Memo of Parties has been filed deleting Respondents No.3 & 4 from the array of parties.

7. It is stated by the learned Counsel for the Respondents No.1 & 2 that Respondents No.3 & 4 are necessary parties to the present proceedings inasmuch as the Tri-partite Agreement was entered into between the Petitioner, Respondent No.1 and Respondent No.3 pursuant to which the loan amount was sanctioned by the Petitioner to the Respondents No.1 & 2. Learned Counsel for the Respondents No.1 & 2 relies on the Order dated 15.07.2024, passed by the Apex Court in Petition(s) for Special Leave to Appeal (C) No(s). 7649/2023, titled as Himanshu Singh vs Union Of India,



whereby the Apex Court has restrained the financial institutions and Builders from taking any action against the home buyers.

8. Undisputedly, a Loan Agreement was entered into between the Petitioner and the Respondents No.1 & 2 which contains Arbitration Clause. As far as the reliance of the learned Counsel for the Respondents No.1 & 2 on the Order dated 15.07.2024, passed by the Apex Court in Petition(s) for Special Leave to Appeal (C) No(s). 7649/2023, titled as Himanshu Singh vs Union Of India, whereby the Apex Court has restrained the financial institutions and Builders from taking any action against the home buyers is concerned, the Apex Court has only directed that no coercive steps be taken by the Financial Institutions against the home-buyers. The coercive steps would mean resorting to the provisions of SARFAESI Act or initiating criminal action against the home buyers or taking possession of the property. In the instant case, the Petitioner has only prayed for appointment of arbitrator for adjudicating on the disputes which has arisen between the parties due to non-payment of the loan amount. As far as the contention of the learned Counsel for Respondents No.1 & 2 on the issue of Respondents No.3 & 4 being necessary parties is concerned, it is always open for the Respondents No.1 & 2 to file an application under Order I Rule 10 of the CPC for impleading Respondents No.3 & 4 to the arbitration proceedings on the basis of Clause 10.7 of the GTC and it is for the learned Arbitrator to consider the said application on its own merits.

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

10. Accordingly, Mr. Rajiv Dwivedi, Advocate, (Mob No.9313061263) is



appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

11. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

12. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

14. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

15. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 16, 2024

Rahul