2024:DHC:9603

$~10

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

% ***Date of Decision : 11.12.2024***

\+ **ARB.P. 1239/2024**

PNB HOUSING FINANCE LTD .....Petitioner

Through: Mr. Anish Bhola and Ms. Parul Bhola, Advs.

versus

M/S K.K BANIJYA PVT LTD & ORS. .....Respondent

Through: Mr. S.K. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*Oral*)

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the petitioner and the respondent nos. 1 to 3, being the parties to the loan transactions entered into between the parties.

2. It is stated that the petitioner company sanctioned and disbursed 11 loans aggregating to an amount of Rs. 12,60,20,477/- (Rupees twelve crores sixty lakhs twenty thousand four hundred and seventy seven). It is relevant to note that the aforesaid loan agreements were secured by two properties belonging to the respondents being:-

i. 3/1 Kumarpura Road, Liluah, Howrah, West Bengal -711204, Mauza Liluah, J.L. No.12, Touzi No. 3989, Khaitan No. 1265, R.S. No. 1975, Dag No. 2482, 2483, 2484, 2490, Ward No. 21, Under Bally Municipality.

ii. 56, MCLEOD Street, P.S. Park Street, Ward No. 61, Park Street, Kolkata, West Bengal-700017.

3. Accordingly, the loan documents were executed between the parties on certain terms and conditions, which admittedly contain an arbitration clause as embodied in Article 10.7 and 10.8 thereof. The said clauses are as under:-

> "***10.7: Governing Law & Jurisdiction***
>
> *This GTC, including all the matters relating to its validity, constructions, performance and enforcement shall be governed by and constructed in accordance with Indian Law. The courts of Delhi will have exclusive jurisdiction in relation to any matter arising under or in connection with GTC or any agreement/ arrangement entered into pursuant to this GTC. However, the parties hereby agree, confirm and undertake that PNBHFL has a right to file its claim or in relation to Amounts Due or any other connected matter(s) in any other competent court in India at its sole discretion.*
>
> ***10.8: Arbitration***
>
> *Any and all the 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 proceedings 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 claims, difference and disputes, arising out of or in relation to dealings/transactions made in pursuant to the Loan Documents including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only.*"

4. The said loan was restructured in October, 2021 and a Supplementary Loan Agreement dated 30.10.2021 is stated to have been executed between the parties. It is stated that thereafter, the respondents neglected to pay the requisite instalments under the loan agreement and, hence, the loan accounts

were classified as a non-performing asset (NPA) on 11.04.2023. Subsequently, statutory demand notices under Section 13(2) SARFAESI Act, 2002 dated 29.04.2023 and 01.05.2023 were sent by the petitioner to the respondents. However, the said notices were not responded to.

5. Eventually, a notice invoking arbitration dated 15.05.2023 was issued by the petitioner. In response thereto, the respondent no.1, while not disputing the existence of an arbitration agreement, sought to refute the demands made by the petitioner.

6. The petitioners have also parallely proceeded to take steps under the SARFAESI Act, 2002 in respect of the secured assets under the loan agreement/s.

7. The petitioner has placed reliance on the judgment of the Supreme Court in ***M.D. Frozen Foods Exports Pvt. Ltd. and Ors. v. Hero Fincorp Limited*** (2017) 16 SCC 741 which has been followed by this Court in ***Aditya Birla Finance Limited v. Anoop Oswal Hosiery and Others*** 2024 SCC OnLine Del 3722 and ***PNB Housing Finance Limited v. Paramjeet Singh Arora & Ors***. bearing Arb.P. 317/2024, to contend that there is no impediment in seeking adjudication of the claims of the petitioner through arbitration as well.

8. Learned counsel for the respondent does not dispute the existence of the Arbitration Agreement. However, he strongly refutes the contentions of the petitioner as regards the merits of the demands sought to be raised. He submits that the parties worked out a One Time Settlement (OTS) dated 16.10.2023, pursuant to which, the respondents' liability towards the petitioner has been substantially discharged.

9. He submits that pursuant thereto, upon the respondents/borrowers

having made substantial payment to the petitioner, a No Objection Certificate (NOC) was given by the petitioner in respect of one of the secured assets. He also submits that the possession of the other property/secured asset has been handed over to the petitioner and apart from realisation of the proceeds of the secured assets which is already available with the petitioner, no further liability can be fastened on the respondent.

10. Needless to say, all these aspects can be urged by the respondent before the duly constituted arbitral tribunal. *Prima facie*, learned counsel for the petitioner is right in contending that in terms of the judgments in ***M.D. Frozen Foods Exports Pvt. Ltd. and Ors.*** (supra), ***Aditya Birla Finance Limited*** (supra) and ***PNB Housing Finance Limited*** (supra), recourse to arbitration is not barred.

11. Further, as held in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine SC 1754, the scope of enquiry in these proceedings, under Section 11 of the A&C Act, is confined to only ascertaining the existence of an arbitration agreement. In the present case, since there is no controversy as regards the existence of the arbitration agreement, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties.

12. Also, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (INDIA) Limited,*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Limited,*** (2017) 8 SCC 377 ***and Bharat Broadband Network Limited v. United Telecoms Limited,*** (2019) 5 SCC 755, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

13. Accordingly, Mr. Justice (Retd.) Siddharth Mridul, Former Chief

Justice, Manipur High Court (Mob. No. +91 9871300042) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

15. The respondent shall be at liberty to raise appropriate objections, if any, as regards arbitrability/maintainability/jurisdiction, which shall be decided by the arbitrator, in accordance with law.

16. The respondent shall also be entitled to raise claims/counter claims, if any, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

17. The learned sole Arbitrator shall fix his fees in consultation with the parties.

18. The petition is allowed in the above terms.

SACHIN DATTA, J

DECEMBER 11, 2024/uk