

rajshree

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

**COMMERCIAL ARBITRATION APPLICATION NO.187 OF 2024
WITH
IN PERSON APPLICATION (L) NO.31117 OF 2024
IN
COMMERCIAL ARBITRATION APPLICATION NO.187 OF 2024**

Tata Capital Housing Finance Limited .. Applicant

vs.

Pradeep Kumar Tyagi & Anr. .. Respondents

ALONGWITH

COMMERCIAL ARBITRATION PETITION NO.543 OF 2024

Tata Capital Housing Finance Limited .. Applicant

vs.

Pradeep Kumar Tyagi & Anr. .. Respondents

Mr.Sarosh Bharucha a/w Ms.Nelly Mehta i/b NMA Legal for the Applicant.

Mr.Harjot Singh Alang for the Respondent.

Mr.Anshul Anjarlekar for the Intervenor.

CORAM : BHARATI DANGRE, J.

DATE : 14th NOVEMBER, 2025.

P.C. :-

1. Tata Capital Housing Finance Limited, a housing finance company, duly registered with the National Housing Bank and incorporated under the provisions of the Companies Act, 1956, has filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short “the Act of 1996”) seeking intervention of the Court in securing an amount due and payable to it by the Respondents as on 25/07/2024, together with the interest at the contractual rate in terms of the Loan Agreement alongwith the additional interest at the rate of 2% per month on the defaulted amount of principal.

It is pleaded that it is under under extra ordinary circumstances, the Petitioner has approached this Court since if the relief is not granted it will defeat the purpose of arbitration proceedings, thereby, burdening the Petitioner to hardship, extreme prejudice and irreparable loss which cannot be computed in terms of money.

2. The Petitioner has also filed an Application under Section 11 of the Act of 1996 seeking appointment of an Arbitrator as the arbitration is already invoked, as the dispute arose between the parties on account of the continued default to honour their obligations in respect of repayment of dues and outstanding amount, in the wake of it extending finance facility to the Respondents vide its sanction letter on the terms and conditions set out therein. Since there was no response to the notice dated 12/03/2024 invoking arbitration, the Petitioner seeks

appointment of an Arbitrator to adjudicate all the disputes and differences that have arisen between them in respect of the amount due and payable under the Loan Agreement.

3. I have heard the learned counsel Mr.Sarosh Bharucha for the Petitioner/Applicant and Mr.Harjot Singh Alang for the Respondent. Mr. Anshul Anjarlekar has marked appearance for the Intervenor as an Application is filed seeking intervention by stating that the intervenor has some interest in the subject matter.

4. I have perused the Loan Agreement, execution of which is not in dispute and I have taken note of the clause pertaining to resolution of disputes in form of Clause 13 alongwith the clause pertaining to ‘Governing Law and Jurisdiction’ contained in the Agreement.

For appreciating the arguments, I deem it appropriate to reproduce the said clauses :-

“13. ARBITRATION

13.1 If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the security hereof or the validity, interpretation, implementation or alleged breach of this Agreement or anything done or omitted to be done pursuant to this Agreement or otherwise in relation to the security hereof, the parties shall attempt in the first instance to resolve the same through negotiation/conciliation. If the dispute is not resolved through negotiation/conciliation within thirty days after commencement of discussions or such longer period as the parties agree to in writing, then the same shall be settled by arbitration to be held in Mumbai in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by TCHFL in the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an Arbitrator, TCHFL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned.

The Borrower's liability hereunder shall not be affected, terminated or prejudiced by the death, insolvency or any incapacity of the Borrower, but such liability shall continue in full force and effect and shall be binding on the Borrower's successors as provided in the title and as the case may be."

"14. GOVERNING LAW AND JURISDICTION

- a. The Borrower agrees that, subject to the provisions of Clause 12.18 above, the courts and tribunals mentioned at Serial No.9 of Schedule 1, shall have jurisdiction.
- b. The provisions of this Agreement shall be governed by the laws in India."

Since Clause 14 is to be read with Schedule 1, it is to be noted that the said Schedule set out the details of loan and in Clause 9, the caption "Place of Jurisdiction" has referred to Dehradun, India.

5. According to Mr. Bharucha, Clause 13 of the Agreement is a clear indication of resolution of disputes initially through negotiation/conciliation, but it further provide that if the dispute is not resolved through negotiation/conciliation within 30 days of the commencement of discussions or such longer period as the parties agree in writing, then the same shall be settled by arbitration.

The clause categorically set out that the arbitration shall be held in Mumbai in accordance with the Act of 1996 and since the intention of the parties is very much clear as they have attached finality to the Award passed by the Arbitrator, the proceedings shall be conducted in Mumbai, it is his submission, that this Court has jurisdiction to entertain the Application under Section 11 and also to appoint an Arbitrator and grant interim measures by entertaining the Petition under Section 9 of the Act of 1996.

The learned counsel Mr. Harjot Singh Alang representing the Respondent, however, would vehemently assert that the clause of 'Governing Law and Jurisdiction' categorically set out that the Courts and Tribunals mentioned at Sr. No.9 of Schedule 1, shall have jurisdiction and this is mentioned as the Courts in Dehradun and, therefore, this Court may not exercise jurisdiction in entertaining Application under Section 11 of the Act of 1996 or even entertaining the Petition for interim prayer.

6. The conundrum between the parties is, therefore, about the 'seat' where the arbitration shall be held as according to Mr. Bharucha, there is a clear indication in Clause 13 that the arbitration shall be held in Mumbai and since Clause 14 is made subject to the above clause i.e. Clause 13 as there is no clause 12.18, the Court and Tribunal mentioned at Sr. No.1 of the Schedule must give way to the clear understanding between the parties that the arbitration shall be held in Mumbai.

The learned counsel for the Respondent has however argued to the contrary by relying upon the clause in relation to 'Governing Law and Jurisdiction' and he would submit that there is a clear indication that the place of jurisdiction is Dehradun.

7. I have perused Clause 13, where there is a consensus that the arbitration shall be held in Mumbai in accordance with the Act of 1996, but the question is whether Mumbai will be a seat of arbitration and whether mentioning of the place of jurisdiction, as Dehradun will override Clause 13 which has stated that the arbitration shall be held in Mumbai.

In *BGS SGS Soma JV vs. NHPC Limited*¹, the position in law has been put to rest as it is held that once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause, as a result of which only the Courts where the seat is located would have jurisdiction over the arbitral proceedings, to the exclusion of all other Courts, even the Courts where part of cause of action may have arisen.

The Judgment also deals with a scenario where the arbitration clause do not refer to the “Seat” of Arbitration, but only refers to “Venue” of arbitration and in the wake of the divulgent views, the Apex Court also threw light on this aspect by determining as to what constitutes the ‘Juridical seat of arbitral proceedings’ and whether, once the seat is delineated by the arbitration agreement whether the courts at the case of the seat would alone have exclusive jurisdiction over the arbitral proceedings.

8. Upon a detail analysis of various provisions in the Act, including the definition of ‘Court’ as well as the jurisdiction as set out in Section 31 of the Act of 1996 alongwith Section 20, as far as place of arbitration is concerned, the underline principle under Section 20 was noted which categorically confer autonomy on the parties to agree on the place of arbitration and sub clause 3 thereof, which permitted the Tribunal, unless otherwise agreed by the parties, to meet at any place it considers appropriate for consideration among its members, for hearing witnesses, experts or the parties and for inspection of documents etc..

¹ (2020) 4 SCC 234

Referring this to be the ‘Venue of arbitration’ the principle laid down in the Constitution Bench Judgment of ***BALCO VS. Kaiser Aluminium Technical Services Inc.***² was invoked as it held that “venue is not synonymous with seat”. In this regard, it is necessary to reproduce the observation in this regard, to the following effect :

“38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of BALCO would show that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the “seat” would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The BALCO judgment, when read as a whole, applies the concept of “seat” as laid down by the English judgments (and which is in Section 20 of the Arbitration Act, 1996), by harmoniously construing Section 20 with Section 2(1)(e), so as to broaden the definition of “court”, and bring within its ken courts of the “seat” of the arbitration.”

“45. It was not until this Court's judgment in Indus Mobile Distribution (P) Ltd. that the provisions of Section 20 were properly analysed in the light of the 246th Report of the Law Commission of India titled, "Amendments to the Arbitration and Conciliation Act, 1996" (August, 2014) (hereinafter referred to as "the Law Commission Report, 2014"), under which Sections 20(1) and (2) would refer to the "seat" of the arbitration, and Section 20(3) would refer only to the "venue" of the arbitration. Given the fact that when parties, either by agreement or, in default of there being an agreement, where the Arbitral Tribunal determines a particular place as the seat of the arbitration under Section 31(4) of the Arbitration Act, 1996, it becomes clear that the parties having chosen the seat, or the Arbitral Tribunal having determined the seat, have also chosen the courts at the seat for the purpose of interim orders and challenges to the award.”

The conclusive observation of their Lordship is to be found in Para 82 of the decision which reads thus :-

² (2012) 9 SCC 552

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which when becomes the "seat" for the purposes of arbitration.”

9. In the wake of the aforesaid authoritative pronouncement, when the parties have agreed that arbitral proceedings 'shall be held' at a particular venue and there is nothing contrary to indicate that it shall not be the seat, that place necessarily is the seat of arbitral proceedings.

The aforesaid ratio flowing from the above decision squarely applies to the facts placed before me and since the parties have clearly expressed in no uncertain terms that the arbitration shall be held in Mumbai, in absence of any contrary indication, and it amounts to the seat of arbitration.

10. As far as the objection raised by the learned counsel for the

Respondent about reading of the clause of jurisdiction in form of Clause 14 which is made subject to above clause i.e. the clause above , is concerned, it is to be noted that the expression 'subject to' must be read as 'notwithstanding' and from the plain and harmonious reading of Clause 13 and 14, it is evidently clear that the arbitration shall be held in Mumbai, but subject to this, the consensus is arrived that the Courts and Tribunals mentioned in Schedule 1 shall have jurisdiction.

However, when Clause 14 is made subject to Clause 13, Clause 13 will have an overriding effect and will gain supremacy on clause 14 and on a harmonious construction of both the clauses, with an intention to ascertain the minds of the parties, on its plain reading it is evident that the parties intended to have the arbitration in Mumbai and, therefore, it will be the Courts in Mumbai which shall have exclusive jurisdiction over the subject matter as it amounts to seat of arbitration.

In the wake of aforesaid, I am of the view that the language used in Clause 13 is clearly indicative of Mumbai as the seat of arbitration, on an Application being preferred seeking appointment of Arbitrator, and since arbitration has been invoked and there is no disagreement between the respective counsel that in the wake of the arbitration clause the dispute must be resolved through the Arbitration, and a consensus is expressed that the Petition under Section 9 permitted to be treated as an Application under Section 17 once the Arbitrator is appointed.

11. In the wake of above, I pass the following order :

A] Mr.Kunal Dwarkadas, an Advocate of this Court is hereby

appointed as the Sole Arbitrator to adjudicate upon the disputes and difference between the parties arising out of and in connection with the Agreement referred to above. The contact details of the arbitrator are as under :-

Mobile No. :- 98215 81853

Office Address :- A6, 1st Floor, Tamarind House,
Tamarine Lane, Fort.

Email ID :- kdwarkadas@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner shall prove the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E] The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

12. The proceedings filed under Section 9 in form of Arbitration Petition is permitted to be converted under Section 17, with an additional pleadings permitted to be filed, at the discretion of the sole Arbitrator.

13. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed hereby.

14. Arbitration Petition as well as the Application stand disposed of.

(BHARATI DANGRE, J.)