



\$~J

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

% **Judgment pronounced on: 13.05.2025**

+ **ARB.P. 786/2024**

PNB HOUSING FINANCE LTD Petitioner

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

versus

G.K. NAIDU TRUST & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking constitution of an arbitral tribunal for adjudication of the disputes between the parties.
2. The disputes between the parties have arisen in context of two non-housing loan facilities which were executed between the petitioner (lender) and the respondent nos. 1-5 (borrowers).
3. The parties initially executed a Loan Agreement dated 17.02.2018 bearing account no. NHL/BAN/0917/427046 (hereinafter '*the loan agreement-I*') for Rs. 2,46,75,000/- (Rupees two crores forty six lakhs seventy five thousand only) which was repayable in equal instalments of Rs.3,46,416/- each, for 120 months.



4. Thereafter, on account of COVID-19, the loan agreement-I came to be restructured *vide* amended sanction letter dated 31.08.2021 whereby the payment of instalments under the loan agreement -I was postponed till September 2022 and the amount payable as instalments under the said loan agreement-I was enhanced to Rs. 4,12,073/-, for 115 months.
5. Thereafter, the parties executed another loan agreement dated 20.11.2020 bearing account no. ANH/BAN/1120/834319 for an amount of Rs. 43,00,000/- (Rupees forty-three lakhs only) payable in equal instalments of Rs. 43,000/- for the first 12 months and then payable in equal instalments of Rs. 1,42,822 for the next 13-48 months.
6. In terms of the aforesaid loan agreement/s, a security in favour of the petitioner was created by the respondents in respect of the property bearing Site No. 18, MIG A Sector, 5th Phase, Yelahanka, New Town, KHB Colony, Bangalore, Karnataka-560064, India (hereinafter '*the subject property*').
7. Upon failure of the respondents to settle the dues under the aforesaid loan agreements, both the loan accounts of the respondents were declared as 'Non-Performing Asset' (NPA) on 09.01.2023.
8. Disputes between the parties have arisen on account of the respondents defaulting to make payments under the aforesaid loan agreements. Thereafter, a statutory demand notice dated 17.01.2023 under Section 13(2) of the SARFAESI Act, 2002 was issued by the petitioner calling upon the respondents to discharge the outstanding loan amount under the two loan agreements aggregating to Rs. 3,17,29,433/- (Rupees three crores seventeen lakhs twenty-nine thousand four hundred and thirty-three only) within a period of 60 days. Even thereafter, since the respondents



failed to discharge the aforesaid outstanding dues, the respondent sought to take possession of the subject property under Section 13(4) of the SARFAESI Act, 2002. A notice in this regard is stated to be issued by the petitioner on 04.05.2023 and the same is also stated to have been circulated through local newspapers on 10.05.2023. However, it is submitted that the petitioner was unable to secure possession of the subject property on account of “continuous obstructions by the respondents”.

9. Clause 10.8 of the General Terms and Conditions governing the loan agreements executed between the parties contains an arbitration 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 the 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.”

10. Since the outstanding liabilities of the respondents under the loan agreements continued to subsist, a notice invoking arbitration dated 16.12.2023 was issued by the petitioner calling upon the respondents to either settle the outstanding dues under the loan agreement or give consent



for reference of the dispute to the Delhi International Arbitration Centre (DIAC) for the adjudication of the disputes between the parties. However, no response has been received thereto.

11. Hence, the present petition.

12. In the present proceedings, notice was issued by the Court on 29.05.2024.

13. Respective counsel for the parties have been heard.

14. Since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666.

15. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

16. Accordingly, Ms. Justice (Retd.) Deepa Sharma, Former Judge, Delhi High Court (Mobile No.: +91 9910384631) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

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



2025:DHC:3660



18. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
19. The parties shall share the arbitrator's fee and arbitral costs, equally.
20. Both parties shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.
21. 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.
22. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.
23. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

MAY 13, 2025/dn