



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.691 OF 2025
WITH
COMMERCIAL ARBITRATION PETITION NO.332 OF 2024

Tata Capital Housing Finance Limited

...Applicant/Petitioner

V/s.

Shantanu Debabrata Datta and Ors.

...Respondents

Ms. Nelly Mehta i/b. M/s. NMA Legal for the Applicant/Petitioner.

Mr. Aniket Srivastav i/b. M/s. Akshar Laws for Respondent No.3.

Ms. Aruna K. Khare, Clerk, Office of the Court Receiver, present.

CORAM: SANDEEP V. MARNE, J.

DATED: 27 FEBRUARY 2026.

P.C.:

1) These are the proceedings filed under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for seeking interim measures before commencement of arbitral proceedings and for constitution of Arbitral Tribunal.

2) I have heard Ms. Mehta, the learned counsel appearing for the Petitioner and Mr. Srivastav, the learned counsel appearing for Respondent No.3. Respondent Nos.1 and 2 are duly served. However, none has appeared on their behalf.

3) The disputes and differences between the parties have arisen out of Loan Agreement dated 29 April 2017 and Tripartite Agreement dated 28 April 2017, under which Petitioner has advanced loan of Rs.97,00,000/- to Respondent Nos.1 and 2, repayment of which is eventually guaranteed by Respondent No.3-Developer.

4) Ms. Mehta submits that Respondent Nos.1 and 2 have stopped repaying the EMIs.

5) By order dated 15 January 2025 this Court has already made ad-interim measures in terms of modified prayer clauses 41(f) and 41(e).

Order dated 15 January 2025 reads thus:-

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act") seeking various interlocutory reliefs to secure the subject property over which disputes and differences exist between the parties, primarily, the non-payment of dues for loan given under the Loan Agreement. The parties to this Petition had executed a tripartite agreement dated April 28, 2017, whereby, the Petitioner advanced a loan of Rs.97,00,000/- to Respondent Nos.1 and 2 who are the borrowers, and whose obligation to repay is evidently guaranteed by Respondent No.3 – Builder who is developing the building in which the borrowers acquired an apartment.

2. The disbursement of funds under the Loan Agreement was directly to Respondent No.3-Builder and he, pursuant to the subvention arrangement, had agreed to stand guarantee not only in terms of the tripartite agreement but also by a contemporaneous deed of guarantee executed by him in favour of the Petitioner.

3. It is seen from a perusal of the record that there has been a default on the part of the borrowers, which has led to enforcement proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAECI Act") being initiated by the Petitioner. It is evident that there is an arbitration agreement in the tripartite agreement and in the Loan Agreement of the same date, and that the Deed of

Guarantee is a document ancillary to tripartite agreement. Consequently, it is evident that there is indeed an arbitration agreement, and there are disputes and differences amenable to arbitration. Consequently, invoking the jurisdiction under Section 9 of the Act, Learned Counsel appearing on behalf of the Petitioner, requests that a Court Receiver be appointed to take charge of the said flat and to have the authority to sell the same by public auction or private bid and appropriate the sale proceeds in favour of the Petitioner. Learned Counsel for the Petitioner, on instructions, states that arbitration shall indeed be invoked no later than two weeks from today.

4. In these circumstances, considering that the Respondents are not before me, although served by the Petitioner, as an ad-interim measure, the relief sought in prayer clause 41(f) is moulded as follows and is hereby granted :-

“Pending the hearing and disposal of Arbitration proceedings, the Court Receiver of this Court, be appointed as Receiver of the said Flat described in Exhibit ‘J’ of the Petition and which is mortgaged to the Petitioner, and all the assets/properties of the Respondents be disclosed by the Respondents on oath. The Court Receiver may take forcible physical possession of the Flat from the respective Respondents and/or the person in possession of the same with the help of police, if necessary.”

5. It would also be appropriate to grant ad-interim relief in terms of prayer clause (e) which reads thus :-

“(e) that pending hearing and disposal of Arbitration proceedings, the Respondents by themselves, their employees, servants and/or agents or otherwise howsoever, be restrained by an order and injunction, from in any manner dealing with, selling, transferring, disposing off, or alienating or encumbering or pledging or mortgaging or hypothecating or charging or parting with possession of or transferring, or inducting anyone else into or creating any right, title or interest or license in favour of anyone else in respect of the assets/properties belonging to the Respondents.”

6. Stand over for further consideration to February 7, 2025 on which date the Petitioner shall address the Court about the status of invocation of arbitration proceedings. Advocates for the Petitioner shall serve a copy of this order on the Respondents, highlighting that the matter shall be considered on the next date. The Respondents may address the Court seeking any variation that they desire.

7. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

6) Perusal of the Loan Agreement and Tripartite Agreement would indicate presence of arbitration clause.

7) Ms. Mehta, prays for continuation of ad-interim measures granted by this Court on 15 January 2025 till the arbitration proceedings are terminated and final Award is made.

8) I accordingly, proceed to pass the following order:-

(A) Mr. Dhruv M. Gandhi, an Advocate of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Loan Agreement dated 29 April 2017 and Tripartite Agreement dated 28 April 2017. The contact details of the Arbitrator are as under :

Office Address:- 2nd floor, Wadia Building, Dalal Street,
Opp. Bombay Stock Exchange, Fort,
Mumbai-400001

Mobile No.:- 9619176568

Email id:- dhruvagandhi95@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of uploading of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith 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 2 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 fees of the sole Arbitrator shall be as 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.

9) Ad-interim measures granted by this Court on 15 January 2025 shall continue to operate till the arbitration proceedings are terminated and final Award is made.

10) All rights and contentions of the parties are expressly kept open to be agitated before the Arbitral Tribunal.

11) With the above directions, Application and Petition are **disposed of.**

[SANDEEP V. MARNE, J.]