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

\# **CNR No. DLHC010060022026**

\+ ARB.P. 320/2026 & I.A. 4541-4542/2026

TATA CAPITAL HOUSING FINANCE LTD .....Petitioner

Through: Ms. Aastha Tiwari, Advocate.

versus

RAJENDRA PRATAP SINGH & ANR. .....Respondents

Through: Ms. Leelawati Suman and Mr. Nitesh Tiwari, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 12.10.2026

1. By way of the present petition, filed under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks the appointment of an arbitrator to adjudicate disputes arising between the parties under a Home Loan Agreement dated 30.06.2019 ["the Agreement"], sanctioned pursuant to a Sanction Letter dated 29.06.2019.

2. I have heard Ms. Aastha Tiwari, learned counsel for the petitioner, and Mr. Nitesh Tiwari, learned counsel for the respondents.

3. It is undisputed that the Agreement was executed between the petitioner, as lender, and the respondents, as borrowers. Under the Agreement, the petitioner sanctioned a home loan of Rs. 3.31 crores in favour of the respondents, in addition to a special-purpose loan of Rs. 7,04,224/-. The existence of an arbitration clause, being Clause 12.11 of the Agreement, is also undisputed. The said clause provides for resolution

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of disputes by a Sole Arbitrator and specifies Mumbai, Delhi, Kolkata or Chennai as the possible venues of arbitration. Although the clause contemplates appointment of the arbitrator by the petitioner, Ms. Aastha Tiwari, learned counsel for the petitioner, fairly concedes that such unilateral appointment would be contrary to the prevailing legal position, and therefore, does not press for appointment in terms of that stipulation.

4. The petitioner invoked the arbitration clause by way of a legal notice dated 30.06.2023. As the notice failed to elicit any response, the petitioner has approached this Court by way of the present petition seeking appointment of an arbitrator.

5. At the outset, Mr. Nitesh Tiwari, learned counsel for the respondents, submits that an arbitrator had already been appointed and an arbitral award was rendered on 05.04.2024 [Document P-8 annexed to the petition]. He contends that the arbitration clause has, therefore, already been acted upon and no fresh appointment of an arbitrator is warranted. He further submits that the award has also been acted upon, as the mortgaged property, by which the loan was secured, has been sold by the petitioner.

6. Mr. Nitesh Tiwari submits that the respondents were never put in possession of the mortgaged property and that the seller from whom they intended to purchase the property is a necessary party to the arbitral proceedings. He also disputes the maintainability of a fresh reference in view of the earlier award and the subsequent sale of the mortgaged property, which according to him, was under the award.

7. In response, Ms. Aastha Tiwari submits that the aforesaid award was rendered by an arbitrator appointed unilaterally and is, therefore, a

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nullity in law. In this regard, she draws attention to paragraph 23 of the petition, wherein the petitioner itself refers to the judgments of the Supreme Court in *TRF Ltd. v. Energo Engineering Projects Ltd.* [(2017) 8 SCC 377], and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* [(2020) 20 SCC 760]. She further submits that the sale of the mortgaged property was effected pursuant to proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and not in execution of the aforesaid award. On behalf of the petitioner, she undertakes that no steps shall be taken to execute or otherwise enforce the award dated 05.04.2024. The petitioner, accordingly, seeks *de novo* reference to arbitration.

8. In the aforesaid circumstances, I am of the view that a fresh arbitration is not barred by any law. As the existence of the arbitration agreement and its invocation are undisputed, I am of the view that the disputes between the parties are required to be referred to arbitration. The objections raised by the respondents, however, are left open for consideration by the learned Sole Arbitrator. These contentions, including the effect of the earlier award and the sale of the mortgaged property, may be urged before the learned Sole Arbitrator. They do not warrant adjudication by this Court in the present proceedings under Section 11 of the Act.

9. In view of the above, the petition is allowed and disposed of in the following terms:

a) Mr. Akshay Makhija, Senior Advocate [Tel.: 9810079901] is appointed as the learned Sole Arbitrator to adjudicate the disputes between the parties arising out of the Agreement dated 30.06.2019.

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b) The arbitral proceedings shall be conducted under the aegis of the Delhi International Arbitration Centre [“DIAC”] and in accordance with the DIAC Rules, including the provisions governing the remuneration of the learned Arbitrator.

c) The learned Sole Arbitrator is requested to furnish the requisite declaration under Section 12 of the Act before entering upon the reference.

10. It is clarified that this Court has not expressed any opinion on the merits of the disputes or on the objections raised by the respondents. All rights and contentions of the parties, including those relating to the arbitrability and maintainability of the claims and the merits of the disputes, are left open for adjudication by the learned Arbitrator.

11. The petition stands disposed of in the above terms.

PRATEEK JALAN, J

OCTOBER 12, 2026
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