2026:BHC-OS:2987

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION (L) NO.35431 OF 2025

Tata Capital Housing Finance Limited .....APPLICANT

: VERSUS :

Inderjeet Sahni and others ....RESPONDENTS

WITH

COMMERCIAL ARBITRATION PETITION (L) NO.35458 OF 2025

Tata Capital Housing Finance Limited ..... PETITIONER

: VERSUS :

Inderjeet Sahni and others ....RESPONDENTS

Mr. Aseem Naphade with Mr. Nikhil Mehta i/b KMC Legal Venture, for Applicant/Petitioner.

Mr. Aman Vijay Dutta (Through VC) with Mr. Hitanshu Patil & Mr. Indranil Maity i/b Mr. Vinayak Pandit, for Respondents.

CORAM : SANDEEP V. MARNE, J.
Reserved On: 22 JANUARY 2026.
Pronounced On: 02 FEBRUARY 2026.

Judgment :

1) Applicant/Petitioner-Lender has filed the present proceedings for appointment of an Arbitrator and for interim measures before commencement and during pendency of arbitral proceedings. Commercial Arbitration Application (L) No.35431 of 2025 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** for appointment of Arbitrator pursuant to clause 12 of the Loan

Agreement for adjudication of disputes and differences between the parties. Commercial Arbitration Petition (L) No.35458 of 2025 is filed under Section 9 of the Arbitration Act seeking interim measures against Respondents to restrain them from selling, transferring, alienating, encumbering, creating third party rights or parting with possession of the mortgaged asset with further direction for demarcation thereof and for appointment of Court Receiver. Petitioner has also sought direction for disclosure of assets of the Respondents with consequential order for stay on creating third party rights in respect of such disclosed assets.

FACTS

2) Petitioner is an incorporated entity engaged *inter alia* in the business of providing finance. Respondent No.1 is the principal borrower and Respondent Nos.2 to 4 are the co-borrowers in respect of credit facilities sanctioned and dispersed by the Petitioner to them. Respondent No.5 is the proprietary concern of Respondent No.1. Petitioner has sanctioned loan of Rs. 2,24,00,000/- to Respondent Nos.1 to 4 under its product name “Home Equity”. In pursuance of sanction and disbursement of loan, Respondents created a charge on land bearing Kh No.174/13 Area 0.115 H. situated at Tatibandh, Raipur, Chhattisgarh State. Loan Agreement has been executed on 27 November 2019 between the Petitioner and the Respondents. Petitioner claims that Respondents have also executed a Memorandum of Entry in favour of the Petitioner. During currency of tenure of the loan, Respondents requested for restructuring of the credit facilities and accordingly, Petitioner granted new restructured loan amount of Rs.2,34,08,671/- on 12 June 2021. According to the Petitioner, Respondents were irregular in repayment of the loan and committed defaults which led to classification of their loan account as Non-Performing Asset (**NPA**). Petitioner issued demand notice dated 6 February 2023 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) calling upon Respondents to pay outstanding

amount of Rs. 2,73,61,794/-. On account of failure on the part of Respondents to pay the demanded amount, Petitioner approached District Magistrate for taking over physical possession of the mortgaged property. By order dated 31 July 2025, Petitioner's Application under Section 14 of the SARFAESI Act was allowed and order was made for physical possession of the mortgaged property. Respondents filed Securitization Application No.874 of 2025 before Debts Recovery Tribunal (**DRT**) at Jabalpur. According to the Petitioner, no relief has been granted in favour of the Respondents in the said Securitization Application. Petitioner issued loan recall notice/invocation notice dated 27 May 2025 to the Respondents calling them upon to pay amount of Rs.3,84,43,629/-. Respondents did not reply to the said notice.

3) In the above background, Applicant has filed Commercial Arbitration Application (L) No.35431 of 2025 under Section 11 of the Arbitration Act for appointment of Arbitrator. Commercial Arbitration Petition (L) No.35458 of 2025 is filed under Section 9 of the Arbitration Act seeking interim measures in terms of following prayers:-

> a. That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to pass an order of injunction restraining the Respondents from selling, transferring, alienating, encumbering, creating third party right, title or interest or parting with possession of the property viz. Kh. No: 174/13, Area 0.115 Hectare, Situated At.: Tatibandh, Raipur, P.C. No: 103, RIC: Raipur-I, Tahsil & Dist.: Raipur (C.G.) Chattisgarh-492 001, more particularly described in Exhibit C hereto;
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> b. That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to pass an order directing the Respondents to clearly demarcate the property which is mortgaged with the Petitioner in the presence of Court Receiver and to appointing the Court Receiver, as receiver of the mortgaged property viz: Kh. No: 174/13, Area 0.115 Hectare, Situated At.: Tatibandh, Raipur, P.C. No: 103, RIC: Raipur-I, Tahsil & Dist.: Raipur (C.G.) Chattisgarh-492 001, more particularly described in Exhibit C hereto with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;
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> c.That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to direct the Respondents to make disclosure as to whether any third party has been occupying the mortgaged property

and the agreement arrangement under which the said third party has been occupying the mortgaged property as also the rent being derived there from. The Respondents and/ or 3rd party be directed to deposit the rent/license fees for occupation of the mortgaged property described in Exhibit C hereto in Court, with further liberty to the Petitioner to have withdrawn the same.

d. That this Hon'ble Court be pleased to pass an order directing the Respondents to disclose on oath all their assets and properties both moveable and immoveable whether held jointly or singly, encumbered or uncembered;

e. That this Hon'ble Court be pleased to pass an order restraining the Respondents from selling, transferring, alienating, encumbering, creating third party right, title or interest or parting with possession of the properties so disclosed by the Respondents which in terms of prayer clause(d) above;

f. That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to pass an order appointing the Court Receiver, as receiver of the properties as which may be disclosed by the Respondents pursuant to prayer clause (d) above with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

g. For interim and ad-interim reliefs in terms of prayer clauses (a) to(f) above;

h. For costs;

i. For such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.

4) Respondents have appeared through Advocates and have filed Affidavit in Reply opposing the Application and the Petition. Since pleadings are complete, both the proceedings are taken up for hearing and disposal.

SUBMISSIONS

5) Mr. Aseem Naphade, the learned counsel appearing for the Applicant/Petitioner submits that there is arbitration clause in the loan agreement and there is valid invocation of notice under Section 21 of the Arbitration Act. He relies on para-5 of notice dated 27 May 2025 which contained request for reference of disputes to arbitration specifying statutory requirements under Section 21 of the Arbitration Act. Alternatively, he submits that Section 9 proceedings can be maintained even before invocation of arbitration clause.

6) Mr.Naphade further submits that Clause 12 of the Loan Agreement clearly contains arbitration clause which provides for seat of arbitration in the cities of Mumbai/Delhi/Kolkata/Chennai with choice left to the Applicant to decide one out of the four cities for holding of arbitration. That the words 'arbitration to be held' deployed in Clause 12 of the Loan Agreement clearly indicates that the same is a reference to the seat of arbitration and not the venue. That arbitration agreement is premised upon party autonomy and parties are free to decide the place of arbitration. That Section 2(e)(i) of the Arbitration Act defines Court as Court having jurisdiction as per the parameters of the suit, but the said provision has no application to the present case as the parties have designated the seat of arbitration and by virtue of Section 20(1) the arbitration has to be held in Mumbai. He relies upon judgment of the Apex Court in ***BGS SGS Soma Versus. NPHC Limited*** [1].

7) Mr. Naphade submits that the Petitioner is constrained to file the present proceedings in the light of peculiar facts and circumstances of the case where the Petitioner is unable to take position of the mortgaged property on account of its amalgamation with adjacent properties. That therefore the order passed by the District Magistrate permitting the Petitioner to take over possession of the mortgaged land has remained on a piece of paper. That therefore making interim measures under Section 9 of the Arbitration Act for identification of property through Court Receiver is necessary.

8) Mr. Naphade further submits that the objection of limitation raised by the Respondent-borrowers is baseless. That limitation is always a mixed question of law and fact. That in any case, the loan account of Respondent is classified as NPA on 3 January 2023 and that therefore the claim would be within limitation. In any case, the loan is repayable in 180 monthly installments and therefore the claim is otherwise within limitation.

[1] (2020) 4 SCC 234

9) Mr. Naphade further submits that initiation of proceedings under the SARFAESI Act is not a bar for invocation of arbitration. That proceedings under the SARFAESI Act are enforcement proceedings whereas the proceedings under the Arbitration Act are adjudicatory proceedings. He relies upon judgment of the Apex Court in ***M.D. Frozen Foods Exports Pvt. Ltd. And others vs. Hero Fincorp Ltd*** [2] and of this Court in ***Tata Motors Finance Solution Ltd Versus Naushad Khan*** [3].

10) Lastly, Mr. Naphade submits that Respondents are in default in repayment of the loan and that as on 2 October 2025, huge amount of Rs.4.05 crores is outstanding. That Petitioner is a mortgagee pursuant to Memorandum of Entry Dated 6 December 2019. That on account of amalgamation of mortgaged properties with other properties of Respondent No.1, it is necessary to appoint Court Receiver for identifying the properties and to handover its possession to the Applicant. He would accordingly pray for making both the Application, as well as the Petition, absolute in terms of prayers made therein.

11) Mr. Aman Dutta, the learned counsel appearing for Respondents would submit that the Application filed under Section 11 of the Arbitration Act is not maintainable as there is no cause of action for the referral proceedings. That notice dated 27 May 2025 is not a notice invoking arbitration. It merely asserts possibility of arbitral proceedings as the notice nowhere called upon Respondents to participate in appointment of an arbitrator in accordance with the 'agreed procedure' within the meaning of sub-sections (5) or (6) of Section 11 of the Arbitration Act read with Clause 12 of the Loan Agreement. That the notice does not even refer to an automatic invocation or triggering of the arbitration clause. Relying on judgment of the Apex Court in ***Adavya Projects Private Limited Versus. M/s. Vishal Structurals Private Limited & Ors*** [4] he submits that an Application under Section 11 of the

2 2017 (16) SCC 741

3 2023 SCC Online Bom 2716

4 (2025) 9 SCC 686

Arbitration Act can lie only after the proposed Respondent fails to act as per the agreed procedure. That notice under Section 21 of the Arbitration Act is not an empty formality and forms the yardstick to determine whether claims raised are within the applicable period of limitation. In absence of such a notice within the meaning of Section 21 of the Arbitration Act, the cause of action itself cannot be deemed to have arisen for the purpose of Section 11 of the Arbitration Act.

12) Mr. Dutta further submits that this Court does not have territorial jurisdiction to entertain either Application under Section 11 or Petition under Section 9 of the Arbitration Act. That arbitration clause does not designate 'a seat' of arbitration, it merely specifies cities of Mumbai/Delhi/Kolkata/Chennai as 'venues' suited to the convenience of the Applicant, which venues are related to Section 20(3) of the Arbitration Act. Absence of any specified 'seat' can further be gathered from blank space under Clause 13 of Annexure-I to the Agreement. That even otherwise, use of the words '*as may be decided by the Lender in accordance with the provisions of Arbitration and Conciliation Act, 1996*' in the latter part of the clause clarifies that such specification of venue is subject to the provisions of Arbitration Act and the judicial pronouncements thereon. In the other words, merely specifying that Arbitral proceedings would be 'held' at a certain place would not *ipso facto* confer jurisdiction on Courts of such place. He relies upon judgment of the Apex Court in ***Ravi Ranjan Developers Private Ltd. Versus. Aditya Kumar Chatterjee*** [5] in support of his contention that in absence of agreed 'seat' of arbitration, Application for appointment of Arbitrator would lie only where the cause of action has arisen. That in the present case, the entire cause of action has arisen at Raipur where the Loan Agreement is executed and where the alleged mortgaged assets are located. Respondents are permanent residents of and carry on business in Raipur. That Applicant itself has invoked proceedings under the SARFAESI Act before the Debts Recovery Tribunal at Jabalpur which exercises

[5] 2022 SCC OnLine SC 568

jurisdiction over the subject matter of the suit. That in ***Ravi Ranjan Developers*** (supra) the Apex Court has held that Section 11 Application must meet the basic tenets of territorial nexus as laid down in the Code of Civil Procedure, 1908 by harmoniously interpreting Sections 2(1)(e) and Section 11 of the Arbitration Act. That the principle of party autonomy cannot be overstretched to mean that parties can confer jurisdiction on Courts which otherwise has no jurisdiction or nexus whatsoever with the subject matter of the dispute.

13) Mr. Dutta further submit that the judgment in ***Ravi Ranjan Developers*** is rendered by the Apex Court after noting the ratio of the judgment in ***BGS SGS Soma*** (supra). That the two judgments are not at variance with each other. While ***BGS SGS Soma*** is rendered after conclusion of arbitration in question with consent of the parties, whereas ***Ravi Ranjan Developers*** is rendered before commencement of arbitration. That the decision in ***BGS SGS Soma*** refers to a specified venue as opposed to a randomised suite or menu of geographical locations as is the case in with Clause 12 in the instant case. Far from designating a juridical seat or place within the meaning of Section 20(1) of the Arbitration Act, all that Clause 12 does is to specify the list of venues to suit the convenience of Applicant depending on where the borrower is situated. That this is referrable to Section 20(3) of the Arbitration Act. That though ***BGS SGS Soma*** goes on to hold that whenever there is express designation of a venue of arbitration, the same would amount to an exclusive designation as the seat, these observations are subject to the recognized principle in paragraph 46 that arbitral autonomy cannot extend to confer jurisdiction on a Court which does not otherwise possess jurisdiction. That the decision in ***Ravi Ranjan Developers*** fills in the lacuna *qua* jurisdiction under Section 11, a provision which stands on a different footing from that contained in Section (2)(1)(e) of the Arbitration Act.

14) Mr. Dutta further submits that the present proceedings are not maintainable in the light of exercise of remedy of initiation of proceedings under SARFAESI Act by the Applicant/Petitioner. That Applicant has already secured protective order under Section 14 of the SARFAESI Act and can enforce remedies *qua* the reliefs of demarcation before the DRT in the pending proceedings. Having elected to choose its remedies under the SARFAESI Act and having participated in the adjudicatory proceedings before the DRT without demur, Applicant is estopped from seeking a reference to arbitration, much less any interim measures. That instant proceedings have been commenced by the Applicant not only after exercise of remedies under Sections 13 and 14 of the SARFAESI Act but well after initiation of adjudicatory proceedings under Section 17 of the SARFAESI Act has been set in motion by the Respondents before the DRT. He submits that the judgment of Apex Court in ***M.D. Frozen Foods*** (supra) is declared to be bad law in ***Vidya Drolia and others Versus. Durga Trading Corporation***[6]. That the Apex Court has expressly held that claims of banks and financial institutions covered under the DRT are not arbitrable. That the judgment cited by the Petitioner/Applicant in ***Tata Motors Finance Ltd.*** (supra) is distinguishable as the Petitioner in those proceedings did not undertake any measure under the SARFAESI Act and it was only in this context that this Court took the view that the reference to arbitration was maintainable.

15) Lastly, Mr. Dutta would submit that the claims of the Applicant are patently barred by limitation. That Respondents' account was classified as None Performing Asset (NPA) with effect from 3 November 2021 which was communicated to them on 22 December 2021 and notice was undisputably not withdrawn. That therefore cause of arbitration arose on 22 December 2021 at the very latest. That therefore, the period of limitation has expired. That no steps under Clause 12 of the Loan Agreement were taken by the Applicant until 6 November 2025 or

[6] 2021 (2) SCC 1

27 May 2025. That the period of limitation expired within three years of 3 November 2021. Even if notice dated 27 May 2025 is treated as invocation notice under Section 21 of the Arbitration Act, the invocation was time barred.

16) On above broad submissions, Mr. Dutta would pray for dismissal of the Application and the Petition.

REASONS AND ANALYSIS

17) The disputes and differences between the parties have arisen out of the Loan Agreement dated 27 November 2019. Perusal of the Loan Agreement would indicate that loan of Rs.2,24,00,000/- was sanctioned to the Respondents under the heading 'Home Equity' which was repayable in monthly equated instalments of Rs.2,54,598/- in 180 months. It is Petitioner's case that Respondents have defaulted in repayment of the loan. The Loan Agreement indicates that charge on the subject land is created in favour of the Applicant by the borrowers. The Applicant also claims execution of separate deed of equitable mortgage in respect of subject land. Respondent No. 1 has executed Affidavit agreeing to demarcate the mortgaged land, which is amalgamated with his other lands.

18) The Applicant initially initiated proceedings under SARFAESI Act and issued notice under Section 13(2) on 6 February 2023. Upon failure of the Respondents to pay the demanded amount, Applicant has secured an order dated 31 July 2025 from District Magistrate, Raipur for securing physical possession of the subject land. It is Petitioner's case that it is unable to secure physical possession of the subject land on account of non-demarcation thereof.

19) Respondent Nos.1 to 4 have also filed Securitization Application before DRT Jabalpur challenging the demand notices dated

22 December 2021 and 6 February 2023 as well as symbolic possession notice issued under Section 13(4) of the SARFAESI Act. They have also questioned declaration of their account as NPA. They have also challenged order of District Magistrate dated 31 July 2025. However, it appears that no orders are passed in favour of Respondent Nos.1 to 4 by DRT till date.

20) It is in the above background that Application under Section 11 for appointment of an Arbitrator and Petition under Section 9 of the Arbitration Act for interim measures is filed by the Applicant/Petitioner.

21) Respondent Nos.1 to 4 have sought to raise four objections to both the proceedings viz. i) that there is no valid invocation of arbitration clause, ii) that this Court does not have territorial jurisdiction to entertain the proceedings, (iii) that reference to arbitration is not maintainable nor any interim measures can be made in the light of exercise of alternate remedy under SARFAESI Act by the Applicant and because of participation in DRT proceedings without demur and (iv) claim of the Applicant being barred by limitation. I proceeded to examine each of the four objections sought to be raised by the Respondent Nos.1 to 4.

NON-INVOCATION OF ARBITRATION

22) Applicant claims to have invoked arbitration vide notice dated 27 May 2025. It is a composite notice demanding amount of Rs.4,33,51,518/- as well as stating that disputes and differences would deem to have arisen between parties in the event of failure to repay the outstanding amount and that the same shall be referred to arbitration. Clause (5) of the notice dated 27 May 2025 reads thus :-

> 5. In the event of failure to repay the outstanding dues as mentioned above, dispute and difference would deemed to have been arisen and the same shall be referred for arbitration proceedings as per the terms

> mentioned in the Loan Agreement. Further, Our Client will share the status of non-payment of the loan facility with CIBIL (Credit Information Bureau of India Limited) and to declare you notice borrower as "defaulter"

23) According to the Applicant, notice dated 27 May 2025 is a valid notice for invocation of arbitration within the meaning of Section 21 of the Arbitration Act. On the other hand, it is the contention of Respondents that it is not a notice invoking arbitration.

24) Section 21 of the Arbitration Act provides thus:

> **21. Commencement of arbitral proceedings.—**
>
> Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

25) Thus, under Section 21 of the Arbitration Act, the Arbitral proceeding commence on the date on which request for the dispute to be referred to arbitration is received by the Respondent. The provision is relevant mainly for computing the period of limitation. Section 21 does not require issuance of any notice as such and what is required is receipt of a “request” for reference of dispute to arbitration. In the present case, while simultaneously demanding outstanding loan amount from the Respondents, the Applicant specifically made known to them that dispute and differences would deem to have been arisen in the event of failure to repay the outstanding dues. It was further stated that such dispute and difference shall be referred to arbitration proceedings as per the terms mentioned in the Loan Agreement. Respondents complain that the notice nowhere calls upon Respondents to participate in appointment of an Arbitrator in accordance with “agreed procedure” within the meaning of Sections 11(5) or (6) of the Arbitration Act. Perusal of the arbitration Clause 12 in the Loan Agreement indicates that no specific procedure is agreed between the parties for making reference to arbitration. The clause merely provides that any dispute, differences or claim arising

between the parties in connection with the loan shall be settled by arbitration in accordance with the Arbitration Act. Furthermore, the Applicant had authority to appoint the arbitrator and it was not necessary to seek concurrence of the Respondents in appointment. However considering the law on the issue of unilateral appointment of arbitrator, Applicant has filed the present Application rather than making appointment unilaterally. No specific procedure was required to be followed for making a request within the meaning of Section 21 of the Arbitration Act for reference of disputes to arbitration.

26) By notice dated 27 May 2025, Respondents were made aware that if outstanding loan amount was not repaid, the dispute/difference would automatically arise between the parties and that the same shall be referred to arbitration. In the light of this specific intimation given to the Respondents, it was not necessary for the Petitioner to again issue a notice requiring Respondents to participate in appointment of an Arbitrator. As a matter of fact, the Apex Court in the recent decision in ***Bhagheeratha Engineering Ltd. vs. State of Kerala***[7] has held that failure to issue notice under Section 21 of the Arbitration Act is not to be fatal to a party if the claim is otherwise valid and arbitrary. The Apex Court held in paras 13,14,16 and 17 as under :-

> **QUESTIONS FOR CONSIDERATION:—**
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> 13. In the above background, the questions that arises for consideration are (a) whether the High Court by the impugned order was justified in holding that the Arbitral Tribunal was appointed at the request of the State to adjudicate dispute No. 1 only? (b) **Was the non-issuance of a notice under Section 21 of the A&C Act by the appellant fatal for it to pursue its claim before the Arbitrator?**
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> **ANALYSIS AND REASONING:—**
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> 14. In our opinion, the High Court totally erred in setting aside the award on the basis that the appointment of the Tribunal was only to adjudicate dispute No. 1. **The High Court also erred in holding that the non-issuance of notice under Section 21 of the A&C Act by the appellant with regard to dispute no. 2 to 4 was fatal for it to pursue its claim before the arbitrator.** The High Court erred in holding that the Arbitral Tribunal exceeded its jurisdiction in deciding the entire dispute. We say so for the following reasons:

[7] 2026 SCC OnLine SC 5

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16. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. **There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable.** In ***ASF Buildtech Private Limited v. Shapoorji Pallonji & Company Private Limited***, one of us, J.B. Pardiwala J., felicitously put the principle thus:—

> 163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of "commencement of arbitration proceedings". The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in respect of a particular dispute commences. The words "particular dispute" assume significance in the interpretation of this provision and its underlying object. It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term "particular dispute", does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the "arbitration agreement" to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.
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> 165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to "particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does

not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function sought or the framing of issues served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act."

More recently in ***Adavya Projects Private Limited v. Vishal Structurals Private Limited***, this Court reiterating the purpose and significance of a notice under Section 21 had the following to observe:—

"24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in the notice. However, non-inclusion of certain disputes in the Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. Further, merely because a respondent did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement."

17. At this stage, it is appropriate to refer to the following passage from the decision of this Court in ***Indian Oil Corporation Ltd. v. Amritsar Gas Service*** which reinforces our holding:—

"15. The appellant's grievance regarding non-consideration of its counter-claim for the reason given in the award does appear to have some merit. In view of the fact that reference to arbitrator was made by this Court in an appeal arising out of refusal to stay the suit under Section 34 of the Arbitration Act and the reference was made of all disputes between the parties in the suit, the occasion to make a counter-claim in the written statement could arise only after the order of reference. The pleadings of the parties were filed before the arbitrator, and the reference covered all disputes between the parties in the suit. Accordingly, the counter-claim could not be made at any earlier stage.

> Refusal to consider the counter-claim for the only reason given in the award does, therefore, disclose an error of law apparent on the face of the award. However, in the present case, the counter-claim not being pressed at this stage by learned counsel for the appellant, it is unnecessary to examine this matter any further."
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> *(emphasis added)*

27) Mr.Dutta has relied upon judgment of the Apex Court in ***Adavya Projects Pvt. Ltd.*** (supra) in support of his contention that the Application under section 11 of the Arbitration Act can lie only after the proposed Respondents fail to act as per agreed procedure. In my view however, the ratio of judgment has no application in the present case. In the case before Apex Court the notice was issued only to Respondent No.1 and not to Respondent Nos.2 and 3 who were sought to be impleaded as parties to arbitral proceedings. The Apex Court held that considering the purpose behind issuance of Section 21 notice, non-service of notice under Section 21 of the Arbitration Act to Respondent Nos.2 and 3 did not automatically bar their impleadment as parties to arbitral proceeding. Also, the judgment in ***Adavya Projects Pvt. Ltd.*** has been considered by the Apex Court in ***Bhagheeratha Engineering Ltd.*** (supra) and it is held that failure to issue notice under Section 21 is not fatal. The judgment thus, far from assisting the case of the Respondents, actually militates against them.

28) Also, the present case does not involve failure to follow agreed procedure. The issue here is about request made under Section 21 of the Arbitration Act. The notice under Section 21 of the Arbitration Act is necessary mainly for the purpose of deciding whether the claims are within the period of limitation. Considering the purpose of issuance of request under Section 21 of the Arbitration Act, in my view, failure to call upon Respondents to participate in appointment of Arbitrator would not mean that there is no invocation of arbitration in the present case. The objection accordingly deserves to be rejected.

TERRITORIAL JURISDICTION

29) Respondent Nos.1 to 4 have challenged jurisdiction of this Court to try and entertain the reference proceedings and also the Petition for interim measures. It is contended that the arbitration clause does not designate seat of arbitration but merely specified Mumbai/Delhi/Kolkata/Chennai as venues to the convenience of the Applicant. They contend that since the Loan Agreement is executed in Raipur, the mortgaged properties are situated in Raipur and Respondents are residents/carry on business in Raipur, Bombay High Court does not have jurisdiction to appoint arbitrator or to consider the Petition for making interim measures. To decide the objection, it would be necessary to consider arbitration agreement in Clause-12 of the loan agreement. :-

> 12. Dispute Resolution:-
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> If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held in [Mumbai/Delhi/Kolkata/Chennai] as may be decided by the Lender in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be bome by the Obligors.
>
> Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI) Act") or proceed to recover dues from the Obligors under the SARFAESI Act and/or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act")

30) Clause-13 relating to jurisdiction is also relevant which reads thus :-

13. Jurisdiction:-

Subject to Clause 12 above, the Parties hereto agree that ail disputes arising out of and/or in relation to this Agreement, shall be subject to exclusive jurisdiction of the courts/tribunals as set out in Serial No. 13 of Annexure 1 hereto. The Lender may, however, in its absolute discretion commence any legal action or proceedings arising out of this Agreement in any other court, tribunal or other appropriate forum and the Obligors hereby consent to that jurisdiction.

31) Thus, under Clause-12 of the Loan Agreement, the parties agreed that the disputes, differences or claims arising between them shall be settled by arbitration to be held in Mumbai/Delhi/Kolkata/Chennai, as may be decided by the lender, and shall be referred to sole arbitrator appointed by the lender. Though the Applicant had exclusive authority to appoint the arbitrator, it has filed application under Section 11 of the Arbitration Act for appointment of arbitrator instead of unilaterally appointing the Arbitrator under Clause-12 considering the development of law on the subject of unilateral appointment of arbitrator.

32) Under Clause-12, parties have agreed that the arbitration shall be held in Mumbai/Delhi/Kolkata/Chennai and it was left to the Applicant to choose one out of the four places for holding of arbitration. Applicant has chosen Mumbai as the place where the arbitration would be held and accordingly has filed the Application for appointment of arbitrator before this Court.

33) Under Clause-13 of the Loan Agreement, parties agreed that the disputes arising out of or in relation to the Loan Agreement, shall be subject to exclusive jurisdiction of the Courts/Tribunals as set out in Serial No.13 of Annexure-1. However, the column at Serial No.13 in Annexure-1 relating to jurisdiction is left blank. Thus, there is no agreement between the parties on territorial jurisdiction. However, Clause-13 further stipulates that the lender may, at his absolute

discretion, commence any legal action or proceedings arising out of the agreement in other court, tribunal or other appropriate forum and the borrowers consented to that jurisdiction. Since the law is well settled that the parties cannot, by agreement, confer jurisdiction on a Court, the latter part of Clause-13 vesting discretion in favour of the Applicant to choose the court/tribunal/forum of its choice is not helpful in deciding the issue of territorial jurisdiction.

34) In my view, the issue of territorial jurisdiction of this Court to entertain reference proceedings hinges squarely on the issue whether the cities specified in Clause-12 are 'seats' or 'venues' of arbitration. If those cities are held to be seat of arbitration, then this Court would undoubtedly have jurisdiction to entertain and decide reference proceedings as Mumbai is one of the places where the arbitration is agreed to be held. If on the other hand, those cities are held to be venues of arbitration, according to the borrowers, the reference proceedings will have to be filed before Chhattisgarh High Court where the cause of action has arisen. As of now, I am not discussing the principle of venue becoming seat of arbitration.

35) Mr.Dutta has strenuously relied on judgment of the Apex Court in ***Ravi Ranjan Developers*** (supra) in support of his contention that arbitration clause containing similar stipulation has been interpreted by the Apex Court to mean that the agreed place was merely a venue and reference proceedings can only be filed in High Court within whose jurisdiction either the cause of action has arisen or where the Defendant resides or carries on the business. In ***Ravi Ranjan Developers***, a Development Agreement was executed and registered between the appellant and respondent therein for development of property situated in Muzaffarpur in Bihar. The Development Agreement contained arbitration clause as under :-

> "37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the sitting of the said Arbitral Tribunal shall be at Kolkata."

36) The Respondent therein had terminated the Development Agreement and filed petition under Section 9 of the Arbitration Act in the Court of District Judge, Muzaffarpur seeking interim measures. Respondent invoked arbitration clause and filed application under Section 11 of the Arbitration Act for appointment of arbitrator before the Calcutta High Court. After withdrawal of that application, fresh application under Section 11(6) of the Arbitration Act was filed in the Calcutta High Court. The appellant challenged territorial jurisdiction of Calcutta High Court to decide the application under Section 11(6) of the Arbitration Act. Respondent defended the objection contending that the parties had agreed for jurisdiction of Kolkata and that therefore the application was rightly filed before Calcutta High Court. The High Court allowed the application and constituted Arbitral Tribunal. In Appeal before the Apex Court, the issue was whether the Calcutta High Court had jurisdiction to entertain the application filed by the Respondent for appointment of arbitrator. The Apex Court has ruled in favour of the Appellant holding that the Development Agreement was executed and registered outside the jurisdiction of Calcutta High Court and that the agreement pertained to development of property located in Muzaffarpur. It was held that appellant also had registered office at Patna outside the jurisdiction of Calcutta High Court. It was further held that no part of cause of action had arisen within the jurisdiction of Calcutta High Court. The Apex Court thereafter considered the contention raised on behalf of the Respondent that the seat of arbitration was in Kolkata and therefore Calcutta High Court alone had jurisdiction to decide application under Section 11(6) of the Arbitration Act. The Apex Court has negatived the contention holding that Kolkata was agreed only as a venue and not seat

of Arbitral Tribunal. The Apex Court accordingly set aside the order of the High Court holding that Calcutta High Court did not have jurisdiction to entertain the reference proceedings.

37) After having gone through the findings recorded by the Apex Court in the judgment in ***Ravi Ranjan Developers***, it is seen that the first part of the judgment decides the issue of jurisdiction with reference to cause of action and holds that no suit could have been filed in a court over which Calcutta High Court had jurisdiction on account of location of immovable property in Muzaffarpur, execution of agreement in Muzaffarpur and residence/business of the appellant at Patna. The Apex Court held in paras-20, 23, 24 and 25 as under :-

> 20. The question in this case is, whether the Calcutta High Court had territorial jurisdiction to pass the impugned orders. The answer to the question has to be in the negative for the reason that the Development Agreement was admittedly executed and registered outside the jurisdiction of the High Court of Calcutta, the agreement pertains to development of property located in Muzaffarpur outside jurisdiction of the Calcutta High Court. The Appellant has its registered office in Patna outside the jurisdiction of Calcutta High Court. The Appellant has no establishment and does not carry on any business within the jurisdiction of the Calcutta High Court. As admitted by the Respondent, no part of the cause of action had arisen within the jurisdiction of Calcutta High Court.
>
> 23. Subject to the pecuniary or other limitations prescribed by any law, suits for recovery of immovable property or determination of any other right to or interest in an immovable property or compensation for wrong to immovable property, is to be instituted in the Court, within the local limits of whose jurisdiction, the property is situated. Certain specific suits relating to immovable property can be instituted either in the Court within the limits of whose jurisdiction the property is situated, or in the Court within the local limits of whose jurisdiction the Defendant actually or voluntarily resides or carries on business.
>
> 24. All other suits are to be instituted in a Court, within the local limits of whose jurisdiction the Defendant voluntarily resides or carries on business. Where there is more than one Defendant, a suit may be instituted in the Court within whose jurisdiction any of the Defendants voluntarily resides or carries on business. A suit may also be instituted in a Court within whose jurisdiction the cause of action arises either wholly or in part.
>
> 25. In the present case, no suit could have been filed in any Court over which the Calcutta High Court exercises jurisdiction, since as stated above, the suit admittedly pertains to immovable property situated at Muzaffarpur in Bihar, outside the territorial jurisdiction of the Calcutta High Court and admittedly, no part of the cause of action had arisen

> within the territorial jurisdiction of the Calcutta High Court. The Appellant who would be in the position of Defendant in a suit, neither resides nor carries on any business within the jurisdiction of the Calcutta High Court.

38) The Apex Court thereafter drew distinction between Court under Section 2(1)(e) of the Arbitration Act and High Court exercising jurisdiction under Section 11(6) for appointing an Arbitrator and held in pars-26, 27 and 28 as under :-

> 26. Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.
>
> 27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.
>
> 28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.

39) The Apex Court in ***Ravi Ranjan Developers*** (supra) thereafter considered the contention raised on behalf of the Respondent therein that the seat of arbitration was at Kolkata and that therefore Calcutta High Court had jurisdiction to appoint an arbitrator. The Apex Court held in paras-43 to 48 as under:

> 43. This Court has perused the Development Agreement. The contention of the Respondent in the Affidavit in Opposition, that the parties to the arbitration agreement had agreed to submit to the jurisdiction of Calcutta High Court, is not correct. The parties to the arbitration agreement only agreed that the sittings of the Arbitral Tribunal would be in Kolkata. Kolkata was the venue for holding the sittings of the Arbitral Tribunal.

44. In Union of India v. Hardy Exploration and Production (India) Inc. a three Judge Bench of this Court held that the sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration, which has a different connotation.

45. In Mankastu Impex Private Limited v. Airvisual Limited 2 a three Judge Bench of which one of us (Hon. A.S. Bopanna, J) was a member, held:

> "19. The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59], the Supreme Court held that: (SCC pp. 43 & 46, paras 97 & 107)
>
> "[T]he location of the seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that country's arbitration/curial law."
>
> 20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties."

46. In this case, the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted in Kolkata. As observed above, the parties never agreed to submit to the jurisdiction of Calcutta High Court in respect of disputes, nor did the parties agree upon Kolkata as the seat of arbitration. Kolkata was only the venue for sittings of the Arbitral Tribunal.

47. It is well settled that, when two or more Courts have jurisdiction to adjudicate disputes arising out of an arbitration agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent, confer jurisdiction on a Court which inherently lacked jurisdiction, as argued by Mr. Sinha.

48. In this case, the parties, as observed above did not agree to refer their disputes to the jurisdiction of the Courts in Kolkata. It was not the intention of the parties that Kolkata should be the seat of arbitration. Kolkata was only intended to be the venue for arbitration sittings. Accordingly, the Respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the A&C Act. The Respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. Neither of the

> parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. We are constrained to hold that Calcutta High Court inherently lacks jurisdiction to entertain the application of the Respondent under Section 11(6) of the Arbitration Act. The High Court should have decided the objection raised by the Appellant, to the jurisdiction of the Calcutta High Court, to entertain the application under Section 11 (6) of A&C Act, before appointing an Arbitrator.

40) The Apex Court thus held that the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted at Kolkata and parties never agreed to submit to jurisdiction of Calcutta High Court nor they agreed upon Kolkata as the seat of arbitration. Moreover, the Apex court considered the effect of respondent himself approaching the District Court at Muzzafapur Nagar for seeking interim measures under Section 9 of the Arbitration Act and held that he was estopped from contending that the parties had agreed to confer exclusive jurisdiction on Calcutta High Court. Thus, in ***Ravi Ranjan Developers*** the Apex Court has held that the arbitration agreement merely agreed for holding of sittings of arbitration at Kolkata and that therefore parties had merely agreed for venue and not the seat. Since there was no agreement on seat, the Apex Court considered the place where the cause of action had arisen, where the property was situated and where the appellant was residing/carrying on business for deciding the jurisdiction and accordingly held that Calcutta High Court did not have jurisdiction to appoint arbitrator. Also the judgment is rendered in the peculiar facts of the case where the Respondent therein had invoked jurisdiction of Muzaffarpur District Court by filing Section 9 Petition and thereafter proceeded to contend that the Calcutta High Court had the exclusive jurisdiction.

41) Before proceeding further, it must be noted that attention of the Apex Court in ***Ravi Ranjan Developers*** was brought to the judgment in ***BGS SGS Soma*** (supra) and the judgment is noted in para-39 and distinguished holding that the same related to application of Part-I of the Arbitration Act to international commercial arbitration where the seat of

arbitration was not in India. However, ***BGS SGS Soma***, is a judgment delivered by three Judge Bench of the Supreme Court. The judgment holds that where the arbitration agreement is silent on 'seat' but stipulates the 'venue', the 'venue' can be treated as the 'seat'. It has held in para-82 off the judgment as under :-

> 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 then becomes the "seat" for the purposes of arbitration.

42) If Kolkata was the 'venue' of arbitration in ***Ravi Ranjan Developers*** and if there was silence as to the 'seat' in the arbitration clause, then venue could have been treated as the seat following the judgment in ***BGS SGS Soma***. However, the Apex Court has proceeded to decide the issue of jurisdiction in ***Ravi Ranjan Developers*** by holding that Kolkata could not be treated as seat of arbitration and that jurisdiction would depend on the place where the cause of action arose and the appellant therein resided. Does this mean that the Supreme Court has made a departure from the principle of venue being treated as seat discussed in ***BGS SGS Soma***? However, in recent three Judge Bench judgment in ***Arif Azim Co. Ltd. Vs. Micromax Informatix FZE*** [8] the Apex

[8] (2025) 9 SCC 750

Court has reiterated the ratio of the judgment in ***BGS SGS Soma*** and has held as under:

> 58. Thus, this Court in BGS SGS SOMA [BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] laid down a three-condition test as to when "venue" can be construed as "seat" of arbitration. The conditions that are required to be fulfilled are as under:
>
> (i) The arbitration agreement or clause in question should designate or mention only one place;
>
> (ii) Such place must have anchored the arbitral proceedings i.e. the arbitral proceedings must have been fixed to that place alone without any scope of change; and
>
> (iii) There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.
>
> 59. Where the aforesaid conditions are fulfilled, then the place that has been designated as "venue" can be construed as the "seat" of arbitration. It is clarified that, while applying the aforesaid test, it must be borne in mind that where a supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is not to be regarded as a contrary indicium, such stipulation does not mean that no seat has been designated rather such stipulation is a positive indicia that the place so designated is actually the "seat".
>
> 60. The aforesaid test was approvingly applied by this Court in Mankastu Impex (P) Ltd. v. Airvisual Ltd.[Mankastu Impex (P) Ltd. v. Airvisual Ltd., (2020) 5 SCC 399 : (2020) 3 SCC (Civ) 278] and it was held that where the reference to a place in the arbitration agreement is not simply as "venue" and rather a reference as place for final resolution by arbitration, such place shall be construed as the seat of arbitration.

43) In my view, however, it is not necessary to delve deeper into this aspect as Mumbai can be treated as one of the seats agreed by the parties for holding arbitration.

44) Section 20 of the Arbitration Act deals with the place of arbitration. Sub-section (1) of Section 20 provides for agreement by parties on the place of arbitration and sub-section (2) provides for determination of place of arbitration by the Tribunal. As contra-distinct from the 'place' of arbitration which becomes the seat, sub-section (3) of Section 20 dealt with the 'venue' at which the Arbitral Tribunal may meet, according to the convenience of the parties.

45) In the present case, the language employed in Clause-12 of the Loan Agreement is, '*the same shall be settled by arbitration to be held in Mumbai/Delhi/Kolkata/Chenna*i'. Thus, the parties have agreed that the arbitration shall be 'held' *inter-alia* at Mumbai. This is contradistinct from the language employed in arbitration clause in ***Ravi Ranjan Developers*** where the clause stipulated that 'sitting of the said Arbitral Tribunal shall be at Kolkata'. Thus, the parties in ***Ravi Ranjan Developers*** agreed that the 'sitting' of the Tribunal shall be conducted at Kolkata. As against this, here parties have agreed that the arbitration shall be 'held' in Mumbai. I am therefore of the view that the seat of the arbitration in the present case is 'Mumbai'. The four places of Mumbai/Delhi/Kolkata/Chennai agreed by the parties in Clause-12 are not the convenient venues. They are seats of arbitration. As observed above, the Applicant had the choice of deciding where the arbitration shall be held out of the four chosen cities. The Applicant has chosen Mumbai as the place where arbitration shall be held. Accordingly, Mumbai is the seat of arbitration.

46) Once Mumbai is treated as the seat of arbitration, resolution of issue of jurisdiction becomes easy and Mr. Dutta also does not seriously dispute that if seat of the arbitration is at Mumbai, this Court would have jurisdiction to decide the reference proceedings. In several judgments such as ***BGS SGS Soma***, and ***Hindustan Constructions Co. Ltd Versus. NHPC Ltd and another*** [9], it is held that once the seat of arbitration is designated, the same operates as an exclusive jurisdiction clause and only the court within whose jurisdiction the seat is located would have jurisdiction to the exclusion of all other Courts.

47) Accordingly, the objection raised by Mr. Dutta to the jurisdiction of this Court to decide reference proceedings or to entertain Petition under Section 9 of the Arbitration Act for interim measures, is accordingly repelled.

9 2020 4 SCC 310

OBJECTION OF NON-ARBITRABILITY

48) Respondents-borrowers have contended that since the Applicant has invoked the remedy under the SARFAESI Act, it is precluded from seeking reference to arbitration. Reliance is placed on judgment of the Apex Court in ***Vidya Drolia*** (supra) in support of the contention that claims of the banks and financial institutions covered under the Recovery of Debts Due to Banks and Financial Institutions Act,1993 **(RDDB Act)** are not arbitrable.

49) On the other hand, the Applicant has relied on judgment of the Apex Court in ***M.D. Frozen Foods*** in support of his contention that exercise of remedy under the SARFAESI Act is not a bar for adjudication of disputes in arbitration. In ***M.D. Frozen Foods*** one of the issues before the Apex Court was whether arbitration proceedings initiated by the Respondent therein can be carried on along with SARFAESI proceedings simultaneously. The issue is answered by the Apex Court holding in paras-29 to 33 as under :-

> 29. The aforesaid two Acts are, thus, complementary to each other and it is not a case of election of remedy.
>
> 30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. 13 That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act.
>
> 31. The discussion in the impugned order 3 refers to a judgment of the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi 13 opining that an arbitration is an alternative to the RDDB Act. In that context, the learned Single Judge 3 has rightly held that this Full Bench judgment 13 does not, in any manner, help the appellants but, in fact, supports the case of the respondent. The jurisdiction of the civil court is barred for matters covered by the RDDB Act, but the parties still have freedom to choose a forum, alternate to, and in place of the regular courts or judicial system for deciding their inter se disputes. All disputes relating to the "right in personam" are arbitrable and, therefore, the

> choice is given to the parties to choose this alternative forum. A claim of money by a bank or a financial institution cannot be treated as a "right in rem", which has an inherent public interest and would thus not be arbitrable.
>
> 32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore v. Union of India 16 it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.
>
> 33. SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum.

50) While the issue before the Apex Court in ***M.D. Frozen Foods*** was with regard to interplay between the provisions of the Arbitration Act and SARFAESI Act, the issue before the Apex Court in ***Vidya Drolia*** was slightly different. However, it appears that while delivering the judgment in ***M.D. Frozen Foods***, the Apex Court took note of the Full Bench judgment of Delhi High Court in ***HDFC Bank Ltd. Versus. Satpal Singh Bakshi***[10] in which it was opined that arbitration is an alternative to the RDDB Act.

51) In ***Vidya Drolia***, the Apex Court did not agree with the view of the Delhi High Court in ***HDFC Bank Ltd Versus. Satpal Singh Bakshi*** (supra) and proceeded to overrule the same. In ***Vidya Drolia***, the Apex Court has ruled that the claims of banks and financial institutions covered under the RDDB Act are not arbitrable as the interpretation otherwise would deprive and deny the banks and financial institutions of specific rights including the modes of recovery specified under the RDDB Act. The Apex Court held in paragraph-58 of the judgment as under :-

10 2012 SCC Online Del 4815

> 58. Consistent with the above, observations in ***Transcore*** on the power of the DRT conferred by the DRT Act and the principle enunciated in the present judgment, we must overrule the judgment of the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh. Bakshi, which holds that matters covered under the DRT Act are arbitrable. It is necessary to overrule this decision and clarify the legal position as the decision in ***HDFC Bank Ltd***. has been referred to in ***M.D. Frozen Foods Exports (P) Ltd***. but not examined in light of the legal principles relating to non-arbitrability. The decision in ***HDFC Bank Ltd***. holds that only actions in rem are non-arbitrable, which as elucidated above is the correct legal position. However, non-arbitrability may arise in case of the implicit prohibition in the statute, conferring and creating special rights to be adjudicated by the courts/public fora, which right including enforcement order/provisions cannot be enforced and applied in case of arbitration. To hold that the claims of banks and financial institutions covered. under the DRT Act are arbitrable would deprive and deny these institutions of the specific rights including the modes of recovery specified in the DRT Act. **Therefore, the claims covered by the DRT Act are non-arbitrable as there is a prohibition against waiver of jurisdiction of the DRT by necessary implication. The legislation has overwritten the contractual right to arbitration**.
>
> *(emphasis added)*

52) Thus in ***Vidya Drolia,*** the judgment in ***M.D. Frozen Foods*** (dealing with the interplay between Arbitration Act and SARFAESI Act) is apparently not overruled. Also the judgment in ***Vidya Drolia*** seeks to protect the interests of banks and financial institutions covered by RDDB Act by not depriving them of remedies that are available under that Act merely because there is arbitration clause in the loan agreement. The Apex Court has ruled that the legislation (RDDB Act) has over written the contractual right of arbitration. In my view, therefore the contention sought to be raised by the Respondent-Borrowers that the judgment of the Apex Court in ***MD Frozen Foods*** is overruled in ***Vidya Drolia*** does not appear to be correct position.

53) Like arbitration proceedings, even proceedings under the RDDB Act are adjudicatory in nature as the arbitrator or the DRT adjudicates the claim of the banks or financial institutions. On the other hand, the remedy under the SARFAESI Act is merely in the nature of enforcement where no adjudication takes place. This is yet another reason why mere initiation of proceedings under the SARFAESI Act cannot be a ground for not permitting adjudicatory proceedings under the Arbitration Act and *vice versa*. However, when it comes to RDDB Act,

there is statutory overwriting of arbitration agreement between the parties. The moment bank or a financial institution is covered under the RDDB Act, arbitration cannot be conducted for adjudication of such claims of such banks or financial institutions merely on the strength of arbitration clause in the Loan Agreement. The idea behind such prohibition is that there cannot be two 'adjudications' in respect of same claim. Since SARFAESI proceedings are not adjudicatory in nature, but are merely for enforcement, initiation of the same would not bar adjudication of Applicant's claims in arbitration.

54) Mr. Naphade has placed on record Notification dated 18 December 2015 issued by the Ministry of Finance, Department of Financial Services, under which Applicant has been notified to be 'financial institution' for the purpose of SARFAESI Act. However, he has clarified that the Applicant has not been notified as a 'financial institution' under the RDDB Act. Respondent-borrowers have also not placed any Notification on record nor have even pleaded in the Petition that the Applicant is a 'financial institution' notified under the RDDB Act. Since Petitioner is not covered by RDDB Act, the ratio of the judgment in ***Vidya Drolia,*** would not apply and Applicant's remedy to arbitrate would continue to survive.

55) The issue as to whether the non-banking financial company covered under the SARFAESI Act can maintain an Original Application before DRT arose for consideration before a Single Judge of this Court in ***ECL Finance Ltd Versus. Mr. Harikishan Shankarji Gudipati Alias Dr. Gogika Harikishan and others***[11], in which this Court has held in paragraphs-24, 25 and 26 as under :-

> 24. I have considered the oral as well as the written submissions of the Learned Advocates for the parties. The principal thrust of the submissions made on behalf of the Respondents is that the decree is required to be transferred to the DRT under the provisions of Section 31 of the RDB Act. On the other hand, the Petitioner contends that the

11 2016 SCC Online Bom 15898

provisions of the RDB Act do not apply to the Petitioner. It is not in dispute that the RDB Act would apply to such banks and financial institutions as defined under the said Act. The term "financial institution" is defined under Section 2(h) of the RDB Act as under:

> Section 2(h) "Financial Institution" means
>
> "(i) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 (1 of 1956);
>
> (ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India by notification, specify"

25. Although the Respondent has in the written submission made a vague reference to the definition of a Public Financial Institution under the Companies Act, 2013, there is nothing on record to show that the Petitioner is a Public Financial Institution. There is nothing on record to show, nor was it contended by the Respondents that the Petitioner is notified by the Central Government under Sub-Section (2) of Section 4-A of the Companies Act or that the Petitioner is notified by the Central Government under the provisions of the Companies Act, 2013 as a "Public Financial Institution".

26. Similarly, there is no notification by which the Petitioner is notified to be a Financial Institution under the provisions of the RDB Act. By the Notification dated 5 th August 2016, the Petitioner is notified as a "Financial Institution" only under the provisions of Section 2(1)(m) (iv) read with Section 31A of SARFAESI Act. The said Notification is not issued under the provisions of RDB Act. Thus, it is clear that the Petitioner is not a "Financial Institution" under the provisions of the RDB Act and consequently, the provisions of the same would not apply. The contention therefore that the decree is required to be transferred to the DRT under RDB Act is untenable.

56) Thus, mere notification as a financial institution under Section 2(1)(m)(iv) read with Section 31A of the SARFESI Act does not mean that such entity automatically becomes a financial institution under the RDDB Act. It must be clarified here that the reporter (SCC) has erroneously put a remark on the report that the judgment has been reversed by the Apex Court. The judgment of learned Single Judge of this Court in ***ECL Finance Ltd.*** (supra) was in two parts. In the first part, this Court ruled that mere notification of an entity as a financial institution under the SARFAESI Act does not make it automatically a financial institution under the RDDB Act. In the second part, the Single Judge of this Court dealt with Contempt Petition and after recording *prima-facie* finding of breach of undertaking, admitted the Contempt Petition. An intra-court Appeal under Section 19 of the Contempt of Courts Act, 1971

was filed by the aggrieved parties challenging obviously only that part of the judgment which admitted the Contempt Petition. The Appeal Court admitted the Appeal leaving open the issue of maintainability to be considered at the time of final hearing. Aggrieved by the order of the Appellate Court admitting the Appeal, the Appellant filed further Appeal before the Apex Court challenging the order of admission of the Appeal. It was submitted before the Apex Court by the Respondent therein that the Single Judge had considered the merits of the case and had already made his mind to punish the respondent therein and that therefore appeal would lie against the order of the learned Single Judge. The Apex Court accordingly set aside the order of the Appeal Court admitting the Appeal holding that the same was not maintainable. The Apex Court requested the learned Single Judge of this Court to consolidate the execution petition and contempt proceedings to determine the exact amount payable by the Respondents in terms of the decree. It therefore cannot be contended that the entire judgment of the learned Single Judge of this Court in ***ECL Finance Ltd.*** is reversed by the Apex Court.

57) Thus, the law appears to be well settled that mere notification of an entity as a financial institution under the SARFAESI Act does not make it a financial institution under the RDDB Act. Since the Petitioner is not notified as financial institution under the RDDB Act, the ratio of the judgment in ***Vidya Drolia*** would not be attracted in the present case and the Applicant is free to exercise the remedy of arbitration notwithstanding initiation of SARFAESI proceedings.

58) The issue of SARFAESI proceedings not operating as a bar for conduct of arbitration proceedings has been considered by the learned Single Judge of this Court in ***Tata Motors Finance Solutions Ltd.*** (supra) in which the issue is captured in the first paragraph of the judgment as under :-

The respondents in these proceedings have raised a fundamental objection regarding jurisdiction of this Court to entertain the two petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) and an application under Section 11 thereof, on the ground that the petitioner - applicant in these proceedings is a 'financial institution' covered under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), further claiming that the petitioner ought to proceed under the SARFAESI Act and that the remedy of arbitration cannot be invoked by the petitioner at all.

59) This Court answered the issue in paragraphs-35 to 38 as under :-

35. As regards the contention raised on behalf of the respondents that arbitration cannot be resorted to as the petitioner has referred to the RDDB Act and SARFAESI Act in the agreement itself, reserving liberty to invoke the provisions of the said statutes, this Court finds that mere reference to the said statutes cannot inure to the benefit of the respondents. As noted hereinabove, the SARFAESI Act is concerned only with the enforcement process after the adjudicatory process through arbitration is completed. Therefore, reference to the SARFAESI Act in the agreements cannot be a bar for the petitioner to invoke arbitration. The reference to RDDB Act in the agreements is limited to the extent that, if in future, there is a change in law and the petitioner is included under the definition of 'financial institution' under the RDDB Act, the petitioner has reserved its right to proceed under the RDDB Act. As on today, the petitioner is admittedly not notified as a 'financial institution' under the RDDB Act, and therefore, the adjudicatory process of arbitration is clearly available to the petitioner, in the light of the above-quoted arbitration clause in the agreements executed between the parties. Thus, the said contention raised on behalf of the respondents is also without any substance.

36. A perusal of the above-quoted arbitration clause indicates that in case of disputes arising between the parties, the adjudicatory process of arbitration has to be resorted to. The petitioner, in the present case, has indeed invoked arbitration. This Court finds that there are arbitrable disputes that have arisen between the parties and that therefore, both the petitions under Section 9 and the application under Section 11 of the Arbitration Act can certainly be entertained.

37. In the light of the above, the objection regarding jurisdiction raised on behalf of the respondents is rejected.

38. The petitioner has claimed interim measures in the backdrop of the material placed on record to indicate the defaults on the part of the respondents in repayment of loans advanced for purchase of vehicles. The subject vehicles were hypothecated with the petitioner. The respondents have not been able to dispute the fact that they have indeed defaulted. In such a situation, there is enough material placed on record on behalf of the petitioner to show that, unless interim measures, as prayed on behalf of the petitioner, are granted, there is likelihood of the respondents dealing with the subject vehicles, including creating third party rights, which would unnecessarily complicate the matters, pending resolution of disputes through arbitration.

60) Mr. Dutta has attempted to distinguish the judgment in ***Tata Capital Finance Solutions*** by contending that the Petitioner therein had not undertaken any measure under the SARFAESI Act and that therefore it was held that bar under Section 34 of the Arbitration Act would not apply in the facts and circumstances of that case. It is well settled position that judgment is an authority for what it decides and not what can be logically deduced therefrom. [SEE: ***Commissioner Of Customs (Port), Chennai Versus. Toyata Kirloskar Motor Pvt. Ltd.***[12] and ***Secundrabad Club and Others Versus. CIT-V and Another***[13]]. The ratio of the judgment in ***Tata Capital Finance Solutions Ltd*** (supra) is that non-notification of a financial institution under the RDDB Act enables it to exercise the remedy of arbitration. The judgment cannot be read to mean that an exposition of law is made therein that the moment SARFAESI remedy is exercised, a financial institution is precluded from undertaking adjudicatory measures under the Arbitration Act.

61) Mr. Dutta has relied upon judgment of Division Bench of Delhi High Court in ***Tata Capital Housing Finance Ltd. Versus. Shri Chand Construction And Appatment Pvt. Ltd. And others***[14] in support of his contention that a financial institution has an option to enforce security under the SARFESI Act and the moment that option is exercised, the arbitration agreement ceases to have effect. However, the judgment is rendered in the light of peculiar facts of that case where the arbitration clause provided that in the event of change in the legal status of Tata Capital Housing Finance Ltd. (**TCHFL**) or any change or amendment in law or notification and TCHFL is brought under the purview of SARFAESI Act or RDDB Act enabling TCHFL to enforce the security under the SARFAESI Act or proceed to recover dues under the SARFAESI Act/RDBB Act, the arbitration provision shall be at option of TCHFL and shall cease to have any effect. It was further agreed that if

12 (2007) 5 SCC 371

13 (2024) 18 SCC 310

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arbitration proceedings were initiated but no award was made, the proceedings can be terminated in the event of TCHFL being notified under the SARFAESI Act or RDDB Act at the option of TCHFL. It is in the light of the above facts that the Division Bench of the Delhi High Court held that the moment TCHFL exercised the option of enforcing security under the SARFAESI Act, the option of arbitration could be abandoned at the will of the Appellant. The Division Bench held that such option was not available with the Respondent therein. Therefore, the Delhi High Court upheld the order of the learned Singe Judge holding the arbitration clause to be invalid. In the present case, the arbitration clause is entirely different and therefore the judgment of the Delhi High Court in ***Tata Capital Housing Finance Ltd.*** (supra) would have no application to the present case.

LIMITATION

62) Another objection raised by the Respondent-borrowers while opposing reference proceedings is that the claims in respect of which reference is sought are patently barred by limitation. Here there appears to be some factual dispute between the parties. According to the Respondent-borrowers, the account was classified as NPA on 3 November 2021. On the other hand, it is the contention of the Applicant that the account was classified as NPA on 3 January 2023. The Applicant's contention is borne out from notice dated 6 February 2023, para-3 of which reads thus :-

> 3. You/All has/have defaulted repayment of the aforesaid Loan in violation of the sanction terms, loan documents and other terms agreed upon and the account has been classified as "non-Performing asset as defined in Section 2(of of the act on 03-01-2023 (date the account was classified as NPA).

63) In my view, there appears to be factual dispute about the exact date on which the account was classified as NPA. The question is a mixed question of law and fact in the present case and it would be

inappropriate to deny reference by recording a definitive conclusion that the claim is barred by limitation. The issue is therefore left open to be decided in the arbitral proceedings.

64) In my view therefore, reference proceedings need to be made absolute by constitution of the arbitral tribunal.

INTERIM MEASURES

65) So far as, the petition filed under Section 9 of the Arbitration Act is concerned, Petitioner faces a unique conundrum where it is unable to take physical possession of the mortgaged assets since there is a failure on the part of the Respondent-Borrowers to demarcate the mortgaged land. According to the Petitioner, the mortgaged property is amalgamated with the other properties and Respondent No.1 had specifically agreed to demarcate the same. My attention is invited to the Affidavit dated 30 November 2019 executed by Respondent No.1 in which it is stated as under:-

> That four boundaries are not mentioned in the sale-deed and the boundaries on side are as per engineer map provided which has been self-attested. That the properties amalgamated with my adjacent properties, I shall separate the property as and when required by TCH FL.

66) It is complained by the Applicant that in enforcement proceedings, it is unable to demarcate the land and secure its possession. It is therefore contended that appointment of Court Receiver is necessary who can take assistance of local surveyor for the purpose of demarcation of the mortgaged property.

67) In my view therefore, prima-facie case is made out for grant of interim measures against the Respondents under Section 9 of the Arbitration Act. The interim measures sought in Section 9 Petition

cannot be directed to be adjudicated by the Arbitrator since a private commissioner/receiver appointed by Arbitrator would not be in a position to secure demarcation of land for the purpose of handing over physical possession thereof to the Applicant. According to the Applicant, an amount of Rs. 4,05,88,153/- was due and payable by the borrower as on 2 October 2025. It is therefore necessary to preserve the subject matter of arbitration by making necessary interim measures. The borrowers are apparently taking disadvantage of inability of Petitioner to secure physical possession of mortgaged property on account of failure on the part of Respondent No.1 to fulfil the obligation of demarcating the same. Respondent No.1 is thus taking advantage of his own wrong. Respondents are also required to be restrained from alienating or creating third party rights in the mortgaged property during pendency of the arbitral proceedings. In my view, therefore a perfect case is made out for directing interim measures against the Respondents.

ORDER

68) Thus the Application filed under Section 11 and Petition filed under Section 9 of the Arbitration Act succeed and I proceed to pass the following order :-

i. Ms. Pooja Khandeparkar, an Advocate of this Court is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Loan Agreement referred to above. The contact details of the Arbitrator are as under :

Mobile. No :- 9821289160

Office Address :- 01-202, 2 Floor, Hamam House, Ambalal Doshi Marg, Fort, Mumbai.

Email ID :- patil49pooja@gmail.com

ii. A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

iii. 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.

iv. The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, 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.

v. 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.

vi. During pendency of arbitral proceedings and till making of an award, there shall be ad-interim measures in terms of prayer clauses (a) and (b) of Section 9 Petition, which read thus :-

> a. That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to pass an order of injunction restraining the Respondents from selling, transferring, alienating, encumbering, creating third party right, title or interest or parting with possession of the property viz. Kh. No: 174/13, Area 0.115 Hectare, Situated At.: Tatibandh, Raipur, P.C. No: 103, RIC: Raipur-I, Tahsil & Dist.: Raipur (C.G.) Chattisgarh-492 001, more particularly described in Exhibit C hereto;
>
> b. That pending the hearing the final hearing and disposal of arbitration proceedings between the parties and till execution of the Award, this Hon'ble Court be pleased to pass an order directing the Respondents to clearly demarcate the property which is mortgaged with the Petitioner in the presence of Court Receiver and to appointing the Court Receiver, as

receiver of the mortgaged property viz: Kh. No: 174/13, Area 0.115 Hectare, Situated At.: Tatibandh, Raipur, P.C. No: 103, RIC: Raipur-I, Tahsil & Dist.: Raipur (C.G.) Chattisgarh-492 001, more particularly described in Exhibit C hereto with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

69) With the above directions, both Arbitration Application as well as Arbitration Petition are disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]