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

Date of Decision: 17.03.2026

+ ARB.P. 950/2025

TATA CAPITAL HOUSING FINANCE LTD

.....Petitioner

Through: Mr. Sanjeev Singh, Ms. Anshita
Argal and Ms. Sandhya
Chawla, Advocates.

versus

NITIN KUMAR AGGARWAL

.....Respondent

Through: Mr. J.S. Rawat and Mr. Rajiv
Jain, Advocates.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition under Section 11(5) of the **Arbitration and Conciliation Act, 1996¹**, seeks the appointment of a Sole Arbitrator for adjudication of disputes as between the parties arising out of a **Loan/Facility Agreement dated 30.09.2016²**.

2. The Agreement contains a dispute resolution clause, namely clause 12.11. The relevant portion of the said Clause 12.11 reads as under:-

“12.11 Dispute Resolution

- a) If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the Security hereof or the validity, in interpretation,

¹ Act

² Agreement



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

3. Learned counsel appearing on behalf of the Respondent, at the outset, submits that the present Petition seeking appointment of an Arbitrator is not maintainable on the ground that, on an earlier occasion, the Petitioner had invoked the arbitration clause as set out hereinabove and, on the basis thereof, had commenced arbitration proceedings and thereafter withdrew the Claims before the Arbitrator, that too without any liberty to invoke fresh Arbitration. The same is indicated in the Order dated 18.03.2025 passed by the Learned Arbitrator. The said Order reads as under:-

“The counsel for the claimant has made submissions with regard to seeking withdrawal of the present arbitration proceedings with a liberty to pursue alternate remedies in accordance with law.

In view of the afore-said submission, claimant company is allowed to withdraw the present arbitral proceeding and pursue remedies in accordance with law.

Present arbitration proceedings are disposed off in terms hereof without any order as to cost.

File be consigned to record.”



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4. Learned counsel for the Respondent further submits that the Petitioner has already been a beneficiary of Orders passed in the insolvency proceedings before the **National Company Law Tribunal, New Delhi**³, in relation to M/s Venta Realtech Private Limited (erstwhile M/s Krrish Reality Nirman Private Limited) which had undergone the **Corporate Insolvency Resolution Process**⁴.

5. He submits that, out of the sum of Rs. 40,339,998 which was originally due to the Respondent, a sum of Rs. 14,118,999 came to be sanctioned. However, the said amount was never disbursed to the Respondent and was instead directly disbursed to the Petitioner.

6. Learned counsel for the Respondent would therefore submit that the amounts which were otherwise payable in relation to the transaction have effectively been channeled to the Petitioner.

7. It is thus contented that all claims as against the Respondent stand satisfied, since the monies which were otherwise payable to the Respondent have already been transmitted to the Petitioner.

8. **Per contra**, learned counsel appearing on behalf of the Petitioner submits that the Order dated 18.03.2025 passed by the Arbitral tribunal was passed in arbitral proceedings which was unilaterally commenced and which suffers from the vice of the unilateral appointment of an Arbitrator.

9. She further submits that the mere initiation of arbitration proceedings, followed by withdrawal of the same without adjudication on merits, would not preclude the Petitioner from re-invoking the arbitration agreement.

10. Learned counsel for the Petitioner also submits that the payment

³ NCLT

⁴ CIRP



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of monies received by the Petitioner pursuant to the insolvency proceedings relates to the Tripartite Agreement executed between the parties and pertains to amounts owed by the developer. According to the Petitioner, the said payments do not encompass or subsume the amounts which are independently payable by the Respondent herein under the Loan/Facility Agreement.

11. This Court has heard the learned counsel for the parties at length and with their able assistance, also perused the pleadings and the documents placed on record.

12. This Court is of the view that the Petitioner had made a conscious choice to invoke the arbitration proceedings in the first instance and thereafter chose to withdraw from the same. It is also noticed that the said invocation of arbitration was relatable to the same Agreement dated 30.09.2016 and Clause 12.1.1 thereof, under which the present Petition is preferred.

13. The Courts had occasion to deal with such similar situations where the arbitration clause has been invoked after voluntary withdrawal of the previous arbitral proceeding, particularly where the underlying dispute appears to have been satisfied.

14. In this regard, it would be apposite to refer to the judgment of the Hon'ble Supreme Court recently in *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad*⁵, wherein it was held that the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure, 1908 would apply to proceedings under Section 11 of the Act, and consequently a party which withdraws such proceedings

⁵ 2024 SCC OnLine SC 3190.



unconditionally, without seeking liberty to institute fresh proceedings, would be precluded from filing a subsequent application for appointment of an arbitrator on the same cause of action. The relevant extract of the same is reproduced herein under for ready reference:

“52. One important aspect that needs to be kept in mind while applying the principles of Order 23 Rule 1 to applications under Section 11(6) of the Act, 1996 is that it will act as a bar to only those applications which are filed subsequent to the withdrawal of a previous Section 11(6) application filed on the basis of the same cause of action. The extension of the aforesaid principle cannot be construed to mean that it bars invocation of the same arbitration clause on more than one occasion. It is possible that certain claims or disputes may arise between the parties after a tribunal has already been appointed in furtherance of an application under Section 11(6). In such a scenario, a party cannot be precluded from invoking the arbitration clause only on the ground that it had previously invoked the same arbitration clause. If the cause of action for invoking subsequent arbitration has arisen after the invocation of the first arbitration, then the application for appointment of arbitrator cannot be rejected on the ground of multiplicity alone.”

(Emphasis supplied)

15. This Court is also of the opinion that the pursuit of the Petitioner to place reliance upon Clause 14 of the Tripartite Agreement to invoke arbitration does not hold any water, since the remedies sought for by the Petitioner arise out of the Loan/Facility Agreement and not out of the Tripartite Agreement, as is clearly indicated in the prayer clause of the present Petition. The cause of action remains the same and has not varied i.e., seeking enforcement of the re-payment under the loan/facility Agreement.

16. This Court also deems it pertinent to note that, in the CIRP proceedings, although certain amounts were shown to be payable to the Respondent, the said amounts have indeed been credited to the account of the Petitioner, quite mysteriously, even when no claims were raised by the Petitioner before the NCLT, when the CIRP was



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underway. However, this Court also takes note of the fact that the amounts claimed under the Loan/Facility Agreement were in fact, in pursuance of the Tripartite Agreement, directly disbursed by the Petitioner to the Company under the Insolvency and Bankruptcy Code, 2016 proceedings.

17. The foregoing facts and circumstances lead this Court to the conclusion that the Petitioner cannot be allowed to proceed with the present Petition in their pursuit to invoke the arbitration clause as against the Respondent, primarily due to two reasons. *First*, that the Petitioner had, on an earlier occasion, invoked the same arbitration clause of the same agreement against the same party and thereafter withdrew the said proceedings and *second*, that the subject-matter of the proposed arbitration by way of the present Petition, *namely*, repayment of the loan, appears to have already been satisfied in view of the transmission of monies into the account of the Petitioner.

18. Therefore, in view of the foregoing discussion and reasons accorded, this Court is of the considered view that the relief sought by cannot be granted and thus, the present Petition is dismissed.

19. Accordingly, the present Petition, along with pending Application(s), if any, are disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J

MARCH 17, 2026/nd/DJ