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

Date of decision: 06th JANUARY, 2026

IN THE MATTER OF:

\+ **ARB. A. (COMM.) 1/2026**

DATABIT TECHNOLOGIES PVT. LTD. AND ORS .....Petitioners

Through: Mr Ram Avtar Sharma, Mr Mohit Sharma, Ms Dinki Arora, Ms Bhumika, Ms. Dhanushree, Advocates

versus

RED FORT CAPITAL FINANCE COMPANY PRIVATE LIMITED .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

I.As. 121-22/2026 (Exemption)

Allowed, subject to all just exceptions.

ARB. A. (COMM.) 1/2026, .A. 120/2026, I.A. 123/2026

1. The present Appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as '**the Arbitration Act'***) has been filed challenging the Order dated 25.09.2025, passed by the learned Sole Arbitrator in an Application filed by the Respondent herein under Section 17 of the Arbitration Act.

2. By the impugned Order, the learned Sole Arbitrator has directed the

Appellants to furnish a bank guarantee of Rs.1,90,98,322/- in favour of the Respondent herein as an interim measure during the pendency of the arbitration proceedings.

3. Shorn of unnecessary details, the facts, in brief, leading to the filing of the present Appeal are as under:

a. It is stated that in the year 2022, the Appellants approached the Respondent herein, which is a registered Non-Banking Financial Company, seeking a financial facility of Rs.2,40,00,000/- for the purpose of purchasing equipment and meeting working capital requirements.

b. On 05.09.2022, a Term Sheet was executed between the parties, pursuant to which the Respondent agreed in principle to extend the facility and initiated steps for creation of security, including mortgage of an immovable property offered as collateral.

c. It is stated that on 19.10.2022, a Facility Agreement was executed between the Respondent and Appellant No.1, wherein the tenure of loan was decided to be 38 months. It is stated that on the same date, an unattested Deed of Hypothecation was executed, whereby certain movable assets of Appellant No.1 were hypothecated in favour of the Respondent. It is stated that Appellant Nos. 2 and 3, along with another guarantor, executed personal guarantees securing the loan.

d. It is stated that although the sanctioned loan amount was Rs.2,40,00,000/-, the Respondent disbursed only a sum of Rs.1,90,98,322/-, to the Appellant No.1 after deducting amounts towards fees, reserves, stamp duty, legal charges, and

other expenses. However, interest was calculated by the Respondent on the entire sanctioned amount, i.e. Rs.2,40,00,000/-.

e. It is stated that during the subsistence of the loan, disputes arose between the parties with regard to repayment obligations, calculation of interest, and other charges. According to the Appellants, a total amount of Rs.45,38,663/- was paid towards EMIs, interest, and other charges, and certain EMIs were deducted in advance at the time of disbursement.

f. It is stated that on 20.06.2024, the Respondent herein issued a Notice under Section 21 of the Arbitration Act invoking the arbitration clause contained in the Facility Agreement. The Appellants replied to the said notice on 11.07.2024, disputing the claims raised by the Respondent.

g. It is stated that on 03.10.2024, the Respondent issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, claiming an outstanding amount of Rs.3,78,41,088/- as on 01.10.2024 and referring to the mortgaged immovable property forming part of the security. The Appellants responded to the said notice, disputing the demand and expressing willingness to explore an amicable resolution.

h. Thereafter, on 24.03.2025, the Respondent initiated arbitration proceedings before the Delhi International Arbitration Centre by filing a claim petition under Section 23 of the Arbitration and Conciliation Act, 1996. It is stated that on the same date, the Respondent also filed an application under Section 17 of the

Act, seeking interim measures, including a direction to the Appellants to secure an alleged amount of Rs.4,05,41,026/- by way of a bank guarantee.

i. It is stated that the Appellants filed their reply to the Section 17 Application on 21.06.2025, contending that the Respondent's claim was already secured by an existing third-party collateral in the form of a mortgaged immovable property, whose value was stated to be substantially higher than the alleged outstanding amount.

j. It is stated that after hearing the parties, the Learned Sole Arbitrator held that it was an admitted position that Appellant No.1 had received a sum of Rs.1,90,98,322/- from the Respondent and, therefore, directed the Appellant No.1 to furnish a bank guarantee of Rs.1,90,98,322/- in favour of the Respondent as an interim measure during the pendency of the arbitration proceedings.

k. Aggrieved by the said order, the Appellants have filed the present appeal under Section 37(2)(b) of the Arbitration Act.

4. It is the case of the Appellants that apart from the fact that the Respondent has made excessive deductions and the learned Arbitrator has not taken into account this fact, the primary grievance of the Appellants is that the learned Sole Arbitrator failed to appreciate that the Respondent's claim was already fully and sufficiently secured, and therefore no further interim protection was warranted under Section 17 of the Arbitration Act. It is stated that the Respondent's loan is secured by a mortgage over an immovable property belonging to a third party, namely M/s Riverside

Heights Pvt. Ltd., which was impleaded as Respondent No. 5 in the arbitration proceedings and was later proceeded ex-parte. It is the case of the Appellants that the mortgage was created pursuant to the Term Sheet dated 05.09.2022 and forms part of the security package agreed between the parties before disbursement of the loan. It is stated that the Respondent itself has relied upon this mortgaged property while issuing the demand notice under Section 13(2) of the SARFAESI Act, thereby clearly acknowledging the subsistence and enforceability of the said security. It is further contended that the market value of the mortgaged property is 7 to 8 times higher than the alleged outstanding dues claimed by the Respondent in arbitration proceedings. It is stated that even as per the Respondent's own case, the alleged outstanding amount ranges between Rs.3.78 crores to Rs.4.05 crores, whereas the value of the secured immovable property far exceeds this figure and, therefore, the Respondent's financial exposure is already more than adequately covered by the existing collateral. The Appellants have further contended that such a direction to furnish security is in the nature of Order XXXVIII Rule 5 CPC which is attachment before judgment and since the Respondent has not been able to satisfy the requirement of Order XXXVIII Rule 5 CPC, therefore, the direction passed by the learned Sole Arbitrator to furnish additional security is contrary to settled law.

5. Heard the learned Counsel for the Petitioners and perused the material on record.

6. The facts of the case reveal that loan was taken by the Appellants from the Respondent herein. The learned Arbitrator has taken into account the fact that there is a dispute regarding the amount that has been disbursed by the Respondent. Even though there is a dispute regarding the disbursed

amount, the learned Arbitrator has taken the lessor amount of Rs.1,90,98,322/- and has proceeded with the case. While dealing with the arguments as to whether the properties mortgaged are sufficient to safeguard the interest of the Respondent or not, the Arbitrator was of the opinion that the property belongs to M/s Riverside Heights Pvt. Ltd., which was impleaded as Respondent No. 5 in the arbitration proceedings and was proceeded *ex-parte* and therefore, the Arbitrator was of the opinion that the mortgage does not secure the interest of the Respondent.

7. It is well settled that the scope of interference under Section 37 is limited. The appellate court does not act as a court of first instance and cannot re-appreciate evidence or substitute its own discretion over that of the arbitral tribunal. Interference is warranted only where the impugned order is perverse, patently illegal, or suffers from a jurisdictional infirmity. Mere disagreement with the view taken by the tribunal or the possibility of an alternative view is not a ground for interference. The power exercised by the arbitral tribunal under Section 17 is discretionary and is guided by settled principles governing grant of interim measures, namely, the existence of a *prima facie* case, balance of convenience, and likelihood of irreparable prejudice.

8. It is equally well settled that interlocutory orders are, by their very nature, discretionary and the scope of interference, in judicial review, with discretionary orders is limited. Where the discretion exercised is towards direction for a deposit, the court has to be additionally circumspect, as the issue of whether a deposit ought, or ought not, to be directed, so as to secure the sanctity of the arbitral proceedings and ensure that they proceed to fruition, is essentially a matter to be assessed by the learned Arbitral

Tribunal. Unless such assessment is perverse or suffers from manifest illegality, the approach of the court, ordinarily, should be one of restraint [refer: Dinesh Gupta v. Bechu Singh, **2021 SCC OnLine Del 5556**].

9. The impugned order demonstrates that the learned Sole Arbitrator was conscious of these principles and applied them to the facts of the case. The tribunal examined the pleadings and documents placed on record and arrived at its conclusion after hearing both sides. No arbitrariness or non-application of mind is discernible from the order.

10. The learned Sole Arbitrator recorded that the sanction of the loan facility, execution of the Facility Agreement, and disbursement of a sum of ₹1,90,98,322/- to the Appellant No.1 were not in dispute. The disputes raised by the Appellants pertain primarily to the computation of interest, penalties, and other charges, which requires detailed examination during the arbitral proceedings. At the interim stage, the tribunal was justified in holding that the Respondent had established a *prima facie* claim arising out of the contractual relationship between the parties.

11. The tribunal also took into consideration the material circumstances placed by the Respondent, including continued defaults in repayment, issuance of loan recall and guarantee invocation notices, dishonour of cheques, classification of the loan account as a non-performing asset, and other surrounding circumstances. On the basis of these factors, the tribunal came to the conclusion that there existed a reasonable apprehension that, in the absence of interim protection, recovery of the claim under a possible arbitral award may be jeopardised. Such an assessment is essentially factual and based on the tribunal's appreciation of the material before it, and does not warrant interference in appeal.

12. It is pertinent to note that although the Respondent had sought security for the entire claimed outstanding amount, the learned Sole Arbitrator consciously restricted the interim measure to the amount of ₹1,90,98,322/-, being the amount admittedly disbursed to the Appellants. This reflects due application of mind and proportionality in the exercise of discretion.

13. The contention of the Appellants that the existence of collateral security bars the grant of interim protection cannot be accepted as an absolute proposition in view of the fact that it belongs to M/s Riverside Heights Pvt. Ltd., which was impleaded as Respondent No. 5 in the arbitration proceedings and was later proceeded ex-parte and, therefore, it cannot be said that the loan was secured. The arbitral tribunal is empowered to grant such interim measures as may be necessary to secure the claim and preserve the efficacy of the arbitral proceedings. The view taken by the tribunal that additional security was warranted, in the facts of the case, cannot be said to be perverse or contrary to law so as to justify interference under Section 37.

14. In the opinion of this Court, the impugned order does not suffer from any patent illegality or jurisdictional error. The learned Sole Arbitrator has acted within the scope of powers conferred under Section 17(1)(ii)(b) of the Arbitration Act.

15. In view of the limited scope of appellate interference under Section 37 of the Arbitration Act and for the reasons recorded in the impugned order, this Court finds no ground to interfere with the order passed by the learned Sole Arbitrator.

16. Accordingly, the Appeal is dismissed. Pending applications, if any,

also stands dismissed.

SUBRAMONIUM PRASAD, J

JANUARY 06, 2026
Rahul