IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 13.05.2026
DELIVERED ON: 19.05.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 69 OF 2026

THE PEERLESS GENERAL FINANCE AND INVESTMENT COMPANY LIMITED

VERSUS

GANGULY HOME SEARCH PRIVATE LIMITED AND ANR

Appearance:

Mr. Ratnanko Banerji, Sr. Adv.
Mr. Arindam Banerjee, Sr. Adv.
Mr. Rajib Mullick, Adv.
Mr. Shirsha Chakraborty, Adv.
Mr. Bikram Sarkar, Adv.
Mr. Subhadeep Poddar, Adv.
Mr. Siddhartha Deb Roy, Adv.
Ms. Bhagyashree Chakraborty, Adv.

..... for the petitioner

Mr. Sabyasachi Chaudhury, Sr. Adv.
Mr. Supratim Dhar, Sr. Adv.
Mr. Dhananjay Nayak, Adv.
Ms. Tanwishree Mukherjee, Adv

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate disputes and differences which have arisen between the parties in connection with a Memorandum of Understanding dated 15.03.2012, an Agreement for Sale dated 15.03.2012, an Agreement for Guarantee dated 15.03.2012, Supplementary Agreements dated 04.03.2014, 26.07.2016

and 26.03.2021, a Tripartite Agreement dated 28.04.2017, and an Agreement for Guarantee dated 01.08.2016.

2. The facts leading to the present case are as follows:

3. The Petitioner is a company incorporated under the provisions of the Companies Act, carrying on business from its registered office within the territorial jurisdiction of this Court. Respondent No. 1 is a real estate developer and promoter engaged in the development of immovable properties. Respondent No. 2 acted as the corporate guarantor in respect of the obligations of Respondent No. 1.

4. A Memorandum of Understanding and an Agreement for Sale, both dated 15.03.2012, were executed between the parties in relation to a proposed real estate project concerning approximately 275.5 decimals of land situated at Holding No. 126, Mahamayapur (West), within the limits of Rajpur Sonarpur Municipality, District South 24 Parganas. Under the Agreement for Sale & MOU, the Petitioner agreed to purchase 61 flats admeasuring approximately 93,225 sq. ft. in the proposed project for a total consideration of Rs.29,36,58,750/- together with applicable taxes. Respondent No. 1 undertook to construct and deliver the said flats within 18 months from the date of the Agreement.

5. Under the Memorandum of Understanding dated 15.03.2012, Respondent No. 1 agreed to sell the allocated flats either to nominees of the Petitioner or to independent third party purchasers on behalf of the Petitioner. The Memorandum of Understanding further provided for a minimum guaranteed return of 15% per annum on the Petitioner's investment and stipulated sharing of excess sale proceeds in certain contingencies.

6. The Memorandum of Understanding contained an arbitration clause providing that all disputes and differences arising between the parties in relation to the said units, the Agreement, and acts done pursuant thereto would be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The parties agreed that the Courts at Kolkata would have exclusive jurisdiction.

7. An Agreement for Guarantee dated 15.03.2012 was executed by Respondent No. 2 in favour of the Petitioner, whereby Respondent No. 2 guaranteed due performance of the obligations of Respondent No. 1 under the Memorandum of Understanding, repayment of the invested amount together with agreed returns, and further guaranteed repayment in the event the project was stalled for any reason whatsoever.

8. By a Supplementary Agreement dated 04.03.2014, the time for completion of the project was extended up to 31.03.2015 and the allocation in favour of the Petitioner was revised from 61 flats to 63 flats, covering approximately 93,901 sq. ft. The said Supplementary Agreement expressly stipulated that all other terms and conditions of the earlier agreements, including the guaranteed return clause and the arbitration arrangement, would continue to remain operative.

9. By a further Supplementary Agreement dated 26.07.2016, the time for completion of the project was extended up to 30.06.2019, with all terms and conditions of the earlier agreements, including those contained in the Memorandum of Understanding and the Agreement for Guarantee, remaining unchanged. An Agreement for Guarantee dated 01.08.2016 was also executed by Respondent No. 2, reaffirming the guarantee obligations.

10. The Respondents could not complete the construction of the total agreed area as per the earlier arrangements. The total outstanding qua original investment was standing at Rs. 13,46,51,380/-. Hence, in order to settle the said amount, a Tripartite Agreement dated 28.04.2017 was executed between the parties in relation to the second phase of the project, referred to as the "4Sight Florence", under which additional units in the second phase development were agreed to be allocated towards adjustment of the Petitioner's financial exposure arising from the earlier agreements.

11. Again a substantial amounts remain unpaid and hence a further Agreement dated 26.03.2021 was executed between the parties, under which five flats forming part of the Florence Project, namely Flat Nos. 4-1, 4-BC2, 4-BC1, L-Cb3 and 3-A4, aggregating approximately 7,436 sq. ft. of super built-up area, were identified and earmarked in favour of the Petitioner. The said Agreement recorded that the aggregate value of the aforesaid flats, calculated at the rate of Rs. 4,500/- per sq. ft., amounted to Rs.3,34,62,000/-, payable by Respondent No. 1 to the Petitioner in instalments, with post-dated cheques to be issued corresponding to the agreed instalment schedule.

12. Respondent No. 1 paid a total sum of Rs.3,34,62,000/- in terms of the Agreement dated 26.03.2021. Disputes thereafter arose between the parties with regard to the outstanding dues, in particular, the guaranteed return at the rate of 15% per annum stipulated under the Memorandum of Understanding and the allied agreements.

13. A demand letter dated 20.03.2024 was thereafter issued by the Petitioner calling upon the Respondents to pay a sum of Rs.26,60,33,250.55/- calculated as on 31.01.2024, together with interest at the rate of 15% per

annum from 01.02.2024 until actual realization. The Respondents denied liability by their letter dated 08.04.2024 and clarified that in view of the payment of Rs. 3,34,62,000/- the contract between the parties stands concluded and no outstanding amount is due towards the Petitioner.

14. In view thereof, by a notice dated 01.09.2025, the Petitioner invoked the arbitration agreement contained in the Memorandum of Understanding dated 15.03.2012 and the allied agreements, calling upon the Respondents to concur in the appointment of an Arbitrator. The Respondents did not take steps for constitution of the Arbitral Tribunal within the period prescribed under the Act.

15. In the aforesaid facts and circumstances, the present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of the disputes and differences which have arisen between the parties in connection with the Memorandum of Understanding dated 15.03.2012 and the allied agreements executed in relation to the Florence Project.

Submissions on behalf of the Petitioner

16. Mr. Ratnanko Banerji, learned Senior Counsel for the Petitioner submits that the present application is maintainable under Section 11 of the Arbitration and Conciliation Act, 1996 and that this Court has the requisite jurisdiction, inasmuch as the Memorandum of Understanding dated 15.03.2012 expressly provides that the Courts at Kolkata shall have jurisdiction and the Petitioner carries on business within the territorial jurisdiction of this Court. It is further submitted that the existence of a valid and binding arbitration clause in the Memorandum of Understanding is not in dispute, and that the subsequent Supplementary Agreements

dated 04.03.2014 and 26.07.2016 expressly preserved all terms of the earlier agreements, including the said arbitration clause, which accordingly governs the entire range of disputes arising out of the commercial arrangement between the parties.

17. It is submitted that a total sum of Rs.30,12,20,463/- was paid by the Petitioner pursuant to the said arrangements, carrying a contractually stipulated guaranteed return of 15% per annum, which obligation has never been extinguished or novated. The Agreement dated 26.03.2021 operated only as a mechanism for partial liquidation of the principal component and did not in any manner supersede the earlier agreements or absolve the Respondents of their liability to pay the assured return. The email dated 14.11.2022 issued by Respondent No. 1 constitutes a clear and unequivocal acknowledgment of the subsisting liability. Despite the demand letter dated 20.03.2024 and invocation of arbitration by notice dated 01.09.2025, the Respondents have failed to discharge their dues, which now stand at Rs.30,29,52,720.16/- as on 31.08.2025, or to take any steps for constitution of the Arbitral Tribunal, necessitating the present application.

18. Learned Senior Counsel relied upon ***SBI General Insurance Company Ltd. v. Krish Spinning,*** reported as ***(2024) 1 SCC 1***, to contend that the Hon'ble Supreme Court held that at the stage of Section 11, the Court is required to confine its inquiry only to the existence of an arbitration agreement and is not to enter into the merits of the disputes, which fall exclusively within the domain of the Arbitral Tribunal. It is further submitted that in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.,*** reported as ***(2025) 1 SCC 502***, particularly paragraph 51 thereof,

the Hon'ble Supreme Court reiterated that the scope of judicial intervention at the pre-reference stage is extremely narrow, and that once the Court is satisfied as to the existence of an arbitration agreement and the failure to constitute the Tribunal, it is obligated to make the appointment, leaving all other questions including limitation, validity of claims, and extent of liability, to be determined by the Arbitral Tribunal.

19. In view of the foregoing submission, learned Senior counsel prayed for the appointment of a sole Arbitrator to adjudicate the disputes and differences arising between the parties in connection with the Memorandum of Understanding dated 15.03.2012 and the allied agreements, and pass such other and further orders as this Court may deem fit and proper in the facts and circumstances of the present case.

Submissions on behalf of the Respondent

20. Mr. Sabyaschi Chaudhury, learned Senior Counsel for the Respondents submitted that the present application under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable and is liable to be dismissed, inasmuch as the Agreement dated 26.03.2021 executed between the parties constitutes a full, final, and complete settlement of all disputes, claims, and liabilities arising out of the earlier agreements, including the Memorandum of Understanding dated 15.03.2012, the Agreement for Sale dated 15.03.2012, the Agreement for Guarantee dated 15.03.2012, and the Supplementary Agreements dated 04.03.2014 and 26.07.2016. It is submitted that upon execution of the Agreement dated 26.03.2021 and payment of the agreed sum thereunder, no subsisting cause of action or dispute remains between the parties capable of being referred to arbitration.

21. It is submitted that a plain and careful reading of the Agreement dated 26.03.2021 in contradistinction to the earlier agreements is decisive on the question of novation and supersession. It is a matter of record that each of the earlier Supplementary Agreements, namely those dated 04.03.2014 and 26.07.2016, contained an express clause specifically providing that all other terms and conditions of the Memorandum of Understanding dated 15.03.2012, the Agreement for Sale dated 15.03.2012, and the Agreement for Guarantee dated 15.03.2012 shall remain unchanged and continue to be operative. The deliberate and conspicuous absence of any such saving or continuity clause in the Agreement dated 26.03.2021 is not a matter of inadvertence or omission. On the contrary, the said absence is a clear and unambiguous indicator of the mutual intention of the parties that the Agreement dated 26.03.2021 was intended to supersede, novate, and bring to a final conclusion all earlier agreements and arrangements between the parties. Where the parties had consciously incorporated a continuity clause in every prior supplementary agreement, the conscious omission of such a clause in the final agreement dated 26.03.2021 must necessarily be construed as a clear departure from the earlier contractual framework, resulting in the extinguishment of all prior obligations, including the arbitration clause contained in the Memorandum of Understanding dated 15.03.2012.

22. It is further submitted that under the Agreement dated 26.03.2021, the parties arrived at a mutually agreed settlement whereby five identified flats aggregating approximately 7,436 sq. ft. were earmarked in favour of the Petitioner, with the aggregate value thereof quantified at Rs.3,34,62,000/- as full and final settlement of all outstanding dues between the parties.

Respondent No. 1 duly paid a total sum of Rs.3,34,62,000/- in terms of the said Agreement. The Petitioner accepted the said payments without protest, demur, or reservation, and crucially, did not raise any claim, demand, or grievance whatsoever for a period of nearly three years thereafter. It is only by a demand letter dated 20.03.2024, issued abruptly after a prolonged and unexplained silence of nearly three years, that the Petitioner sought to resurrect claims which had stood finally settled and extinguished under the Agreement dated 26.03.2021. Such conduct on the part of the Petitioner is wholly inconsistent with the existence of any subsisting liability or live dispute between the parties and clearly constitutes as acknowledgment, by conduct, of the finality and binding nature of the settlement arrived at under the Agreement dated 26.03.2021.

23. It is submitted that the Agreement dated 26.03.2021 does not contain any arbitration clause. Since the said Agreement supersedes and extinguishes all earlier agreements between the parties, the arbitration clause contained in the Memorandum of Understanding dated 15.03.2012 does not survive and cannot be invoked by the Petitioner for reference of disputes arising, if any, out of the Agreement dated 26.03.2021. It is a settled proposition of law that an arbitration agreement must be traced to a valid and subsisting agreement between the parties, and where the agreement containing the arbitration clause has been superseded and extinguished by a subsequent agreement which contains no arbitration clause, the right to invoke arbitration under the earlier agreement is lost. In the present case, since the Agreement dated 26.03.2021 operates as a complete novation and supersession of the earlier agreements, and since the said Agreement contains no arbitration clause, the Petitioner cannot be permitted to

selectively invoke the arbitration clause from an agreement which no longer governs the relationship between the parties.

24. It is accordingly submitted that the present application under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable and deserves to be dismissed. It is submitted that this Court, even at the threshold stage under Section 11, is entitled and indeed obligated to examine whether a valid and subsisting arbitration agreement exists between the parties, and upon such examination, it will be apparent that no such agreement survives in view of the full and final settlement arrived at between the parties under the Agreement dated 26.03.2021. The application may therefore be dismissed accordingly.

Legal Analysis

25. This Court has heard the arguments advanced by the learned counsel for both the parties, perused the documents placed on record, and examined the judgments cited at the Bar.

26. The core question falling for consideration in the present application under Section 11 of the Arbitration and Conciliation Act, 1996 is whether a valid and subsisting arbitration agreement exists between the parties, and whether the Agreement dated 26.03.2021 operates as a novation and supersession of the earlier agreements, including the Memorandum of Understanding dated 15.03.2012 containing the arbitration clause, so as to deprive this Court of the jurisdiction to appoint an Arbitrator.

27. Before proceeding to examine the rival contentions, it is necessary to briefly advert to the scope of inquiry at the stage of Section 11 of the Act. The Hon'ble Supreme Court in ***SBI General Insurance Company Ltd. v. Krish Spinning*** (supra) has authoritatively held that the jurisdiction of

the Court under Section 11 is essentially limited to examination of the existence of an arbitration agreement between the parties, and that the Court ought not to enter into the merits of the disputes or embark upon a detailed examination of the rival claims, which fall squarely within the domain of the Arbitral Tribunal. The Hon'ble Supreme Court further reiterated in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.*** (supra) that the scope of judicial intervention at the pre-reference stage is extremely narrow, and that questions of limitation, validity of claims, and the nature and extent of liability are matters which must be left to be determined by the Arbitral Tribunal. This Court is respectfully guided by the said pronouncements.

28. Turning to the principal contention of the Respondents, it is urged that the Agreement dated 26.03.2021 operates as a complete novation and final settlement of all earlier agreements and that, in the absence of a continuity clause in the said Agreement preserving the earlier agreements, and in the absence of an arbitration clause in the Agreement dated 26.03.2021 itself, the Petitioner cannot invoke the arbitration clause contained in the Memorandum of Understanding dated 15.03.2012.

29. This Court has carefully considered the said submission. While the contention is not without some surface plausibility, this Court is of the considered view that the said question involves a detailed examination of the nature, effect, and legal consequences of the Agreement dated 26.03.2021 vis-à-vis the earlier agreements, which is essentially a matter going to the merits of the dispute between the parties and cannot be conclusively determined at the threshold stage of Section 11.

30. The question of whether a subsequent agreement operates as a novation or supersession of an earlier agreement containing an arbitration clause is not a simple or straightforward jurisdictional question to be resolved at the stage of Section 11. Novation is a question of fact and intent, to be determined upon a careful examination of the entirety of the contractual documents, the surrounding circumstances, the conduct of the parties, and the true mutual intention of the parties at the time of execution of the subsequent agreement. A bald contention that the absence of a continuity clause in the Agreement dated 26.03.2021 necessarily results in the extinguishment of all earlier agreements and the arbitration clause contained therein cannot be accepted at the threshold stage without a detailed factual and legal inquiry, which is more appropriately the domain of the Arbitral Tribunal.

31. It is further observed that the Agreement dated 26.03.2021, on a prima facie reading, appears to have been executed in the context of and with reference to the earlier agreements between the parties. The said Agreement identifies the disputes as arising from the earlier arrangements, which itself is indicative of the fact that the parties did not treat the earlier agreements as having been completely obliterated or rendered non-existent. The very reference to outstanding dues and their adjustment necessarily presupposes the continued relevance and existence of the earlier contractual framework under which such dues had accrued. In these circumstances, it cannot be said, even prima facie, that the Agreement dated 26.03.2021 was intended to be a clean slate settlement extinguishing all prior rights and obligations of the parties.

32. It is further pertinent to note that the question of whether the Agreement dated 26.03.2021 constitutes a full and final settlement extinguishing the liability to pay the guaranteed return at 15% per annum, or whether it was limited to partial liquidation of the principal component only, is itself a disputed question of fact which lies at the heart of the controversy between the parties. This is precisely the nature of dispute which the arbitration clause in the Memorandum of Understanding was designed to address, and it would be wholly inappropriate for this Court to adjudicate upon the said question at the stage of Section 11.

33. This Court is also not persuaded by the Respondents' contention that the prolonged silence of the Petitioner between 2021 and 2024 is determinative of the question of settlement. Questions of waiver, acquiescence, and limitation are matters which fall within the exclusive province of the Arbitral Tribunal and cannot constitute a ground for refusal to appoint an Arbitrator at the stage of Section 11. It is well settled that issues of limitation and laches do not go to the jurisdiction of the Arbitral Tribunal but are matters to be raised and adjudicated before the Tribunal itself.

34. On the question of the survival of the arbitration clause, this Court is of the considered view that where a series of agreements form part of a single, integrated, and continuing commercial transaction, and where the earlier agreements contain a broad arbitration clause covering all disputes and differences arising in connection with the said transaction, the said arbitration clause does not get extinguished merely by reason of execution of a subsequent agreement which is silent on the point, unless there is a clear, express, and unambiguous provision in the subsequent agreement indicating that the parties intended to abandon and give up the right to

arbitrate. In this regard, this Court finds guidance in the recent judgment of the Hon'ble Supreme Court in ***Balaji Steel Trade v. Fludor Benin S.A. & Ors.,*** reported as ***2025 INSC 1342***, wherein the Hon'ble Supreme Court reiterated that novation of a contract must be established by clear and unequivocal intention of the parties to substitute the earlier agreement with a new one, and further held that the arbitration clause in the "mother agreement" prevails unless a later contract unequivocally replaces it. The Hon'ble Supreme Court also categorically held that subsequent agreements that are transaction specific and ancillary in nature, and which merely facilitate performance of the broader arrangement, do not novate or supersede the principal agreement.

35. In the present case, no such express provision exists in the Agreement dated 26.03.2021. The mere absence of a continuity clause, without more, is not sufficient to displace a clearly worded and broadly framed arbitration agreement which was intended to govern the entire range of disputes arising out of the commercial relationship between the parties.

36. In view of the foregoing analysis, this Court is satisfied that:

(i) A valid arbitration agreement exists between the parties as contained in the Memorandum of Understanding dated 15.03.2012;

(ii) Disputes and differences have arisen between the parties in connection with the said agreements which are referable to arbitration;

(iii) The Petitioner duly invoked the arbitration agreement by notice dated 01.09.2025 and the Respondents failed to take steps for constitution of the Arbitral Tribunal within the prescribed period;

(iv) The question of whether the Agreement dated 26.03.2021 operates as a novation or supersession of the earlier agreements, and all other questions going to the merits of the dispute, including the quantum of liability, the effect of the settlement, and issues of limitation and laches if any, are matters which must be determined by the Arbitral Tribunal and cannot be adjudicated at the stage of Section 11;

(v) This Court is accordingly obligated to appoint an Arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996.

37. In the result, the present application succeeds. All conditions precedent for exercise of jurisdiction under Section 11 stand satisfied. This Court accordingly proceeds to appoint an independent arbitrator for adjudication of the disputes between the parties.

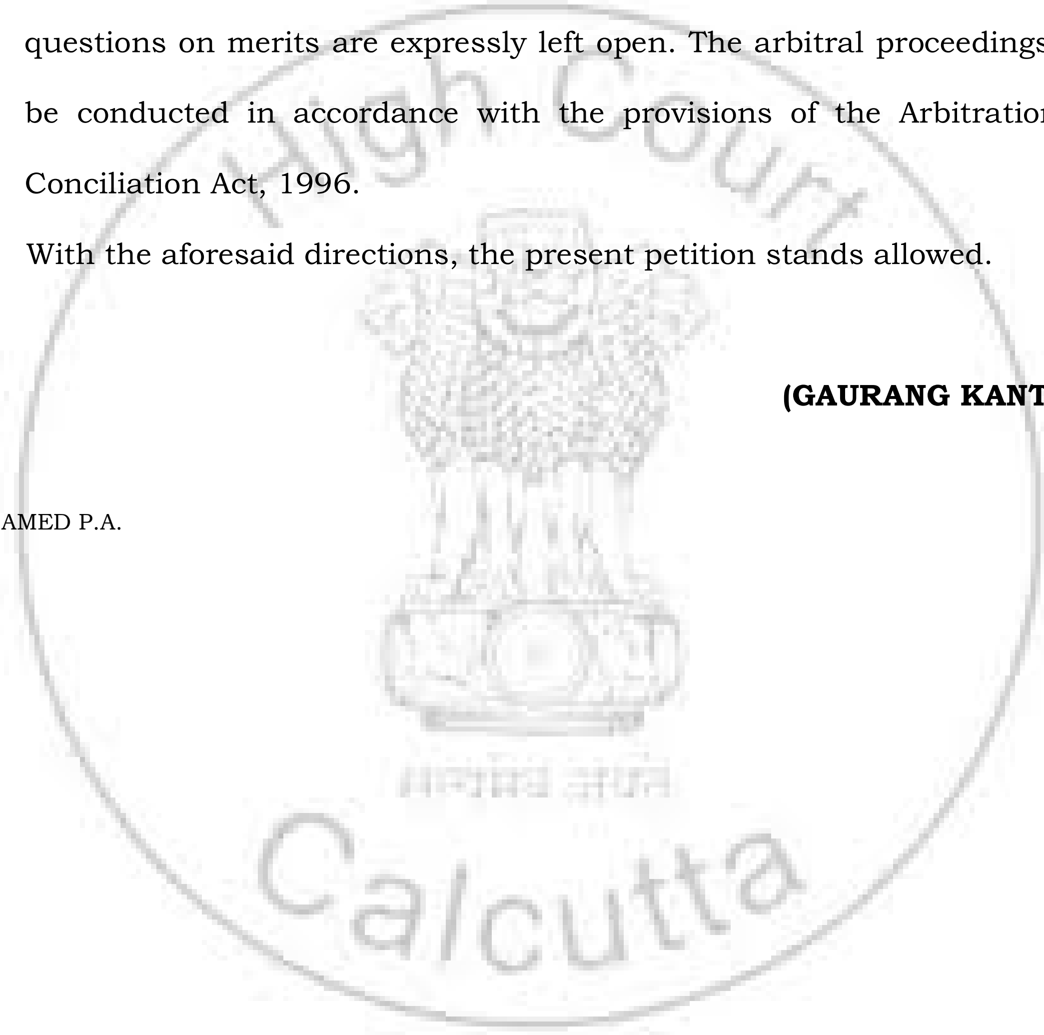
38. Accordingly, this Court appoints Mr. Justice Indra Prasanna Mukerji (Retired), as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of and in relation to the Memorandum of Understanding dated 15.03.2012, an Agreement for Sale dated 15.03.2012, an Agreement for Guarantee dated 15.03.2012, Supplementary Agreements dated 04.03.2014, 26.07.2016 and 26.03.2021, a Tripartite Agreement dated 28.04.2017, and an Agreement for Guarantee dated 01.08.2016.

39. The appointment shall be subject to compliance with the disclosure requirements under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be entitled to fix remuneration in accordance with the Fourth Schedule to the Act.

40. The learned Sole Arbitrator shall be entitled to fix his remuneration in terms of the Fourth Schedule of the said Act.

41. The learned Arbitrator shall be at liberty to consider and decide all objections raised by any party, including the question of limitation of individual claims and any question of maintainability, as preliminary issues, after affording full opportunity of hearing to all parties. All questions on merits are expressly left open. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

42. With the aforesaid directions, the present petition stands allowed.



(GAURANG KANTH, J.)

SAKIL AMED P.A.