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

\# **CNR No. DLHC010403312026**

\+ O.M.P.(I) (COMM.) 371/2026 & I.A. 23494/2026

UGRO CAPITAL LIMITED .....Petitioner

Through: Mr. Jayant Mehta, Ms. Monisha Handa, Mr. Mohit D. Ram, Ms. Mansvini Jain, Mr. Arnav Chaudhary, Advs.

versus

TRUCAP FINANCE LIMITED & ANR. .....Respondents

Through: Mr. Utkarsh Joshi, Mr. Sharian Mukherji, Mr. Vinay Thakur and Ms. Sudarshana Bandyopadhyay, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 01.09.2026

1. This petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996[1], seeking interim measures of protection via direction to Respondent No. 1 to furnish security that it has failed to furnish as per the terms of the Business Partnership Agreement dated 20.10.2022[2] executed between the Petitioner and Respondent No. 1, and to furnish replacement security in place of the security which has been furnished but cannot be encashed by the Petitioner, pending constitution of the Arbitral Tribunal.

[1] "the Act" hereinafter

2. The Petitioner and Respondent No. 1 are both non-banking financial Companies. By the subject agreement, the Petitioner and Respondent No. 1 entered into a co-lending arrangement to jointly grant loans to borrowers in the agreed ratio. Respondent No. 2 is the Bank with which Respondent No. 1 furnished a lien-marked fixed deposit in favour of the Petitioner. No substantive relief being claimed against Respondent No. 2.

3. Under Clause 5.4 of the Agreement read with Schedule X thereto, Respondent No. 1 was obliged to furnish a First Loss Default Guarantee[3] to the Petitioner, in two components, namely a lien-marked fixed deposit[4] to the extent of 5% of the monthly portfolio outstanding, and a Corporate Guarantee[5] to the extent of 5% of the quarterly portfolio outstanding.

4. Against the FD required under the Agreement, Respondent No. 1 furnished an FD of only Rs.1,75,00,000/-, leaving a shortfall in the FD component, and failed to furnish any CG except a part payment of Rs.1,27,00,000/- paid in January 2024, leaving a shortfall of Rs.1,09,00,000/- in the CG component.

5. The aggregate FLDG shortfall of Rs.1,70,00,000/- was communicated by the Petitioner to Respondent No. 1 on 30.01.2025. Respondent No. 1 on 31.01.2025, without disputing its obligation of furnishing the FLDG, sought the updated calculation of FLDG from

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[2] "the agreement" hereinafter
[3] "FLDG" hereinafter
[4] "FD" hereinafter

the Petitioner and undertook to escalate the matter to its Management but has till date not made good the shortfall.

6. When the Petitioner sought to invoke the FD component of the FLDG vide its letter dated 16.07.2025, it was informed by Respondent No. 2 that such FD can't be encashed on account of an alleged order of stay passed by another Court in other proceedings restraining the encashment of securities furnished on behalf of Respondent No. 1.

7. The Petitioner is not a party to such proceedings and has no direct knowledge regarding any alleged stay order. The security furnished by Respondent No. 1 has there been rendered incapable of invocation by the Petitioner.

8. The submission of the learned Senior Counsel for the Petitioner is that the financial condition of Respondent No. 1 has, in the meanwhile, deteriorated. Respondent No. 1 has defaulted in the servicing of its own borrowings, its credit rating is lowering and it has reported mounting losses.

9. The obligation of Respondent No. 1 towards FLDG being an admitted and undisputed obligation, the Petitioner apprehends, on reasonable grounds that unless Respondent No. 1 is directed to secure the amounts in question, any award that the Petitioner may obtain in the intended arbitration will be reduced to a paper decree.

[5] "CG" hereinafter

10. Disputes and differences within the meaning of Clause 21 of the agreement have arisen between the parties, the seat, place and venue of arbitration being at Delhi. The Petitioner intends to invoke arbitration and has approached this Court, in the meanwhile, under Section 9 of the Act.

11. Having heard learned Senior counsel for the Petitioner and perused the petition along with the documents annexed thereto, this Court is satisfied that the balance of convenience lies in favour of the Petitioner, and that unless the Petitioner is protected by way of interim measures, the Petitioner would be exposed to irreparable harm inasmuch as any Award that may be passed in the intended arbitration would be reduced to a paper decree.

12. At this stage, learned Counsel appearing for the Respondent has submitted that he has no objection that dispute can be referred to arbitration.

13. Accordingly, Ms. Manisha Suri, Advocate (Mob. No. 9810075174) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within three weeks from today.

14. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

15. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre ("DIAC"). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

16. It shall be open to the parties to raise all pleas, including objection as to arbitrability and jurisdiction, before the learned Sole Arbitrator who shall decide the same in accordance with law.

17. It is clarified that the observations made herein are only for the purpose of deciding the present petition. The learned Sole Arbitrator shall adjudicate the disputes with claims and counter claims independently and on their own merits, uninfluenced by any observations contained in the present order.

18. The Registry is directed to send a receipt of this order to Ms. Manisha Suri, learned Arbitrator through all permissible modes including email.

19. Lastly, in view thereof, Respondent, whether by itself, its Directors, officers, servants or agents are restrained from creating any third party right or encumbrance over or otherwise for disposing of assets to the extent of Rs.1.70 crores.

20. Upon constitution of the Arbitral Tribunal, the present petition shall be treated as an application under Section 17 of the Arbitration

and Conciliation Act, 1996 and shall be placed before the learned sole arbitrator for consideration in accordance with law.

21. The interim arrangement directed by this Court shall continue until the learned sole arbitrator considers the matter and passes appropriate orders thereon.

22. It shall be open to the learned Arbitral Tribunal, upon consideration of the matter on its own merits, to continue, modify, vary or vacate the aforesaid interim arrangement.

23. All rights and contentions of the parties are left open and nothing contained in this order shall be construed as an expression of opinion on the merits of the disputes.

24. The petition, along with the pending application(s), is disposed of in the aforesaid terms.

OM PRAKASH SHUKLA, J

SEPTEMBER 1, 2026/at