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

\# **CNR No. DLHC010276432026**

\+ ARB.P. 1048/2026

TATA CAPTIAL HOUSING FINANCE LIMITED

.....Petitioner

Through: Ms. Taniya Bansal, Adv.

versus

RAJESH BEHAL & ANR. .....Respondents

Through: Mr. Shaurya Mittal and Ms. Dhanya Visweswaran, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 19.11.2026

1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996[1], seeking the appointment of an independent and impartial Sole Arbitrator to adjudicate the disputes arising between the parties in relation to Loan Account No. TCHHL0349000100085787.

2. The case of the Petitioner is that a loan facility was initially extended to the Respondents in the year 2017, which was subsequently restructured at their request.

3. However, thereafter also, as per the Petitioner, the Respondents allegedly committed defaults in repayment of the restructured loan, resulting in an outstanding liability of Rs.69,35,871/- as on 23.05.2026.

[1] "Act" hereinafter

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4. It is borne out from the record that the Petitioner invoked arbitration *vide* notice dated 01.04.2026 by relying upon arbitration clause contained in Clause 12.11(a), which read as follows:

> *"12.11 Dispute Resolution*
> *(a) "If any dispute, difference or claim arises between the parties in connection with the Agreement or the Security hereof or the validity, interpretation, 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 17 ARB.P.-1048/2026 the arbitrator shall be final and binding on all parties concerned"*

5. Learned Counsel for the Respondents has raised the preliminary objection on the maintainability of the present petition on the ground that this Court lacks territorial jurisdiction to entertain the present petition as Clause 12.11(a) merely provides for arbitration to be held at Chennai/Delhi/Mumbai without designating any one of these places as the juridical seat of conferring exclusive jurisdiction upon the courts at Delhi.

6. Relying upon ***Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.***[2]**,** ***BGS SGS Soma JV v. NHPC Ltd.***[3]**, and Arif Azim Co. Ltd. v.**

[2] **(2020) 5 SCC 399**
[3] **(2020) 4 SCC 234**

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Micromax Informatics FZE[4], it is contended that the mere mention of Delhi as one of the alternative venues cannot confer jurisdiction upon this Court as the test laid down in ***BGS SGS Soma (supra)*** explicitly requires only one seat to be mentioned. Reliance is also placed upon the decisions in ***Tata Capital Ltd. v. Shiv Shakti Industries***[5] and ***Tata Capital Housing Finance Ltd. v. Kalu Ram Dhingra***[6]**.**

7. It is further submitted that, in the absence of a designated seat, territorial jurisdiction must be determined in accordance with Section 2(1)(e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure, 1908.

8. It is contended that none of the connecting factors in the present case has any nexus with Delhi, as the Respondents reside at Panchkula, the loan was sanctioned and serviced through the Petitioner's Chandigarh branch, the mortgaged property is situated at Zirakpur, Mohali, and the SARFAESI proceedings were also instituted before the competent forums at Mohali and Chandigarh.

9. Accordingly, it is submitted that the appropriate forum, if otherwise maintainable, would be the Punjab and Haryana High Court.

10. *Per Contra*, learned counsel for the Petitioner submits that Clause 12.11(a), by providing for arbitration to be held at Chennai/Delhi/Mumbai, permits the parties to choose any one of the

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[4] **2024 SCC OnLine SC 3212**
[5] **ARB.P. 1784/2025**
[6] **ARB.P. 197/2026**

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designated places as the seat of arbitration. Relying upon ***BGS SGS Soma JV (supra), and Arif Azim (supra),*** it is contended that the mention of multiple places does not render the clause ambiguous or warrant recourse to Sections 16 to 20 of the Civil Procedure Code, 1908.

11. It is further contended that by issuing the notice invoking arbitration under Section 21 of the Act, the Petitioner exercised its choice of Delhi as the place of arbitration due to convenience and, on that basis, claims that this Court has territorial jurisdiction to entertain the present petition.

12. It is also contended that the location of the loan-processing branch, the mortgaged property and the SARFAESI proceedings, cannot override the parties' contractual choice of the arbitral seat.

13. I have considered the submissions advanced on behalf of the parties and perused the record.

14. Having considered the rival submissions, this Court is unable to accept the Petitioner's contention that the mere mention of Delhi in Clause 12.11(a) confers territorial jurisdiction upon this Court for appointment of an Arbitrator. The said clause merely provides for the venue of arbitration as "Chennai/Delhi/Mumbai".

15. The distinction between the seat and venue of arbitration, and the manner in which the seat is to be identified where the agreement does not expressly designate one, has been recently summarised by the

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Hon'ble Supreme Court in ***J&K Economic Reconstruction Agency v. Rash Builders India Pvt. Ltd.***[7]**,** in the following words:

> ***"18.*** *Thus, the principles governing the distinction between the seat and venue of the arbitration, and the jurisdictional consequences that follow, may be summarised as under:—*
>
> *(i) The seat of arbitration constitutes the juridical home or legal place of arbitration. It determines the curial law governing the arbitral process and identifies the Court having supervisory control over the arbitration.*
>
> *(ii) Once the seat is designated by agreement of the parties, the courts of that place alone have exclusive jurisdiction to entertain all proceedings arising out of the arbitration, including challenges to the award. The designation of the seat operates akin to an exclusive jurisdiction clause, excluding all other courts - even those where the cause of action may have arisen.*
>
> *(iii) The venue is merely a geographical location chosen for convenience for holding hearings, examination of witnesses, or meetings of the arbitral tribunal. It does not confer jurisdiction and does not, by itself, alter or determine the seat. The arbitral tribunal is free to conduct proceedings at locations different from the seat without affecting the juridical seat.*
>
> *(iv) The mere fact that arbitral proceedings are conducted or the award is rendered at a particular place does not confer jurisdiction on courts of that place if it is different from the designated seat. The seat remains fixed unless expressly altered by agreement of the parties.*
>
> ***(v) Where the seat is not expressly designated, courts determine it by applying:***
>
> ***(a) the closest and most intimate connection test, identifying the place most closely connected with the arbitration (based on the Naviera Amazonica principle); and***
>
> ***(b) in appropriate cases, construing the venue as the seat where the agreement and surrounding circumstances indicate such intention (as reflected in the Shashoua principle).***
>
> ***(vi) The intention of the parties, as discerned from the arbitration agreement and surrounding circumstances, is***

[7] **2026 INSC 368**

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the paramount factor in determining the seat. Once such intention is expressed-either expressly or by necessary implication-it must be given full effect by Courts."

16. The circumstances in which a venue may be construed as the seat have also been explained in ***Arif Azim Co. Ltd. (supra)***, wherein the Supreme Court affirmed the three-condition test laid down in ***BGS SGS SOMA JV (supra)***. As per ***Arif Azim Co. Ltd. (supra) and BGS SGS SOMA JV (supra),*** the foremost condition to construe venue automatically as a seat is that the arbitration clause must designate or mention only one place. The other requirements are that the arbitral proceedings must be anchored to that place, without any scope for change, and that there must be no significant contrary indication suggesting that the place is merely a venue. The relevant observations are as follows:

> ***"57.*** *This Court in its decision in BGS SGS SOMA JV v. NHPC [BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] held that wherever in the arbitration agreement there is designation of a place of arbitration as "venue" of the "arbitral proceedings", then such place effectively is the "seat" of arbitration. This is because, the expression "arbitral proceedings" does not refer to individual hearings but rather the whole arbitration process including the making of the award. It further held that where the parties have anchored the arbitral proceedings to one fixed location or place, it would indicate that the parties intended such place to be the seat of arbitration. It held that where the place designated as venue in the arbitration agreement is coupled with there being no other significant contrary indicia that such place is merely a venue, then such place would be construed as the "seat" of the arbitral proceedings. This Court also added that the international context where a supranational body of rules is to govern the arbitration in or in the national context the laws of a particular country then this would further be an indicia that the "venue" designated in the arbitration agreement is really the seat of arbitration. The relevant observations read as under: (SCC pp. 301-302, para 82)*
>
> *"82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of*

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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."

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*

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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. The relevant observations read as under: (SCC pp. 406-407, paras 20-22)*

> *"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.*
>
> *21. In the present case, the arbitration agreement entered into between the parties provides Hong Kong as the place of arbitration. The agreement between the parties choosing "Hong Kong" as the place of arbitration by itself will not lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. The words, "the place of arbitration" shall be "Hong Kong", have to be read along with Clause 17.2. Clause 17.2 provides that "... any dispute, controversy, difference arising out of or relating to MoU shall be referred to and finally resolved by arbitration administered in Hong Kong....". On a plain reading of the arbitration agreement, it is clear that the reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The agreement between the parties that the dispute "shall be referred to and finally resolved by arbitration administered in Hong Kong" clearly suggests that the parties have agreed that the arbitration be seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have power of judicial review over the arbitration award.*
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> *22. As pointed out earlier, Clause 17.2 of MoU stipulates that the dispute arising out of or relating to MoU including the existence, validity, interpretation, breach or termination*

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> *thereof or any dispute arising out of or relating to it shall be referred to and finally resolved by the arbitration administered in Hong Kong. The words in Clause 17.2 that "arbitration administered in Hong Kong" is an indicia that the seat of arbitration is at Hong Kong. Once the parties have chosen "Hong Kong" as the place of arbitration to be administered in Hong Kong, the laws of Hong Kong would govern the arbitration. The Indian courts have no jurisdiction for appointment of the arbitrator."*
>
> ***(emphasis supplied)***

17. In the present case, the very first requirement, that only one venue should be mentioned, is not satisfied. Clause 12.11(a) mentions three places, namely Chennai, Delhi and Mumbai, and therefore, it is apparent that there was no intention of the parties to anchor the arbitral proceedings to Delhi alone and consequently, the principle laid down in ***BGS SGS Soma (supra)***, as affirmed in ***Arif Azim (supra)***, cannot be invoked to treat Delhi as the seat of the arbitration merely because it is agreed as one of the venues.

18. In a case where multiple venues are mentioned but no seat is provided, the position is further clarified by the recent decision of the Hon'ble Supreme Court in ***Arcis Clean Energy Pvt. Ltd. v. Parshva Innovation***[8]. The Supreme Court held that where the agreement provides for more than one place in relation to the arbitral proceedings, the test in ***BGS SGS Soma (supra)*** cannot be mechanically applied to treat one of those places as the juridical seat. The agreement must, in such circumstances, be read as a whole to ascertain the intention of the parties. The relevant observations are as follows:

[8] **2026 INSC 1109**

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"21. ***In the present case, a plain reading of the arbitration clause would indicate that Delhi is not the only place specified for arbitration. Both Delhi and Goa are mentioned as places for holding arbitration. Thus, when we apply the tests laid down in BGS SGS SOMA (supra), which have been affirmed in Arif Azim (supra), the place specified i.e. venue for arbitral proceeding would not automatically be the seat of arbitration.*** *In such a situation, the Governing Law clause i.e., Clause 38 of the Agreement would be helpful in determining the juridical seat. Since Clause 38 of the Agreement confers exclusive jurisdiction to the courts at Goa and Clause 32.5 provides that arbitration proceedings will be held in Goa, it is clear that the parties have agreed that Goa shall be the juridical seat, Delhi is just a venue.*

***

23. Now we shall consider the decisions cited by the learned counsel for the respondent. In Sasan Power (supra), this Court held that arbitration agreement is an independent agreement, and the arbitration clause is not the one that governs rights and obligations arising out of the substantive contract rather it only governs the way of settling disputes between the parties. It was also held that parties can agree upon the governing law but may not have any agreement for settlement of dispute through arbitration. There can be no quarrel with the aforesaid proposition. Here, the arbitration clause itself mentions two places. One of those two has been chosen by the parties for the courts located therein to have exclusive jurisdiction. In such a situation, to determine the juridical seat, the Governing law clause 38 cannot be ignored. Similarly, in the Delhi High Court decision in M/s. Cable Corporation of India (supra), the arbitration clause specifies only a single place and not two places as is there in the present case. The said decision is therefore distinguishable. In the other decision of the Delhi High Court rendered in Sunil Kumar Chandra (supra), which has been cited on behalf of the respondent, the arbitration clause has not been extracted in the judgment. However, from the judgment, it appears that one of the clauses of the agreement made it clear that Delhi was chosen as the seat of arbitration, but it was not clear whether the other place specified therein was for arbitration. This decision too is, therefore, distinguishable. Besides, here the arbitration clause itself specifies two places for arbitration. The Constitution Bench decision of this Court in Ramkishorelal (supra) is on the general principle that to construe an instrument, an effort must be there to ascertain the intention of the parties after considering all words. We fail to understand as to how this decision would be of any help to the respondent. In Shree Bhowani Cotton Mills (supra), another decision cited on behalf of the respondent, it was held that mere conferment of exclusive jurisdiction on courts at Calcutta to entertain and try suits in respect of any claims or disputes would

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not nullify the arbitration agreement. ***In the present case, there is no issue about the existence of an arbitration agreement and, further, there is no dispute that the arbitration agreement itself specifies two places, namely, Delhi and Goa; in such circumstances, in our view, the juridical seat would have to be ascertained by reading the Agreement in its entirety so as to decipher the true intention of the parties.*** *The last judgment relied on behalf of the respondent is one rendered by the Karnataka High Court in M/s Lyrus Life Sciences (supra). The said decision holds that where precise location of arbitration is specified as Bengaluru, the argument that the cause of action had arisen in the State of Himachal Pradesh would not be relevant for the purposes of arbitration. This decision is of no relevance to the present case because the arbitration clause itself specifies both Delhi and Goa for arbitration. Therefore, whether the juridical seat is Delhi or Goa would have to be ascertained on the basis of intention of the parties as could be evinced from a holistic reading of various clauses of the Agreement.*

24. Upon reading the Agreement in its entirety, we find that the juridical seat of arbitration was at Goa, therefore, we are of the view that the Delhi High Court lacked jurisdiction to entertain the application under sub-section (6) of Section 11 of the 1996 Act. Consequently, the appeal is allowed. The order passed by the High Court is set aside. The parties would be at liberty to take recourse to appropriate proceedings before the jurisdictional High Court."

(emphasis supplied)

19. Applying the aforesaid principle of ascertaining the intention of the parties by reading the Agreement as a whole, this Court finds that there is nothing in the Loan Agreement to indicate that the parties intended to designate Delhi as the juridical seat. Clause 12.10 merely provides that the Agreement shall be governed by the laws of India. It neither identifies Delhi as the seat nor confers exclusive jurisdiction upon the courts at Delhi. No other contractual stipulation or surrounding circumstance has been brought to the notice of this Court which would indicate that the arbitral proceedings were intended to be anchored to Delhi.

20. The Petitioner's attempt to rely upon the inclusion of Delhi in Clause 12.11(a) is, therefore, misplaced. At the highest, the clause

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provides the parties with alternative places where the arbitral proceedings may be conducted as per their choice. The choice of a place for convenience of conducting hearings cannot, without anything more, be treated as a choice of the juridical seat. The two concepts operate in different fields and carry different legal consequences. While the venue concerns the convenience of conducting proceedings, the seat determines the Court which exercises supervisory jurisdiction over the arbitration.

21. Even if this Court were to give effect to the choice of the parties, the Petitioner has not been able to point out any contractual stipulation or circumstance which would establish a closer connection of the arbitration with Delhi, as compared to Mumbai, where the Petitioner has its registered head office, or Chennai. As pointed out by the Respondents, they reside at Panchkula, the loan was sanctioned and serviced through the Petitioner's Chandigarh branch, the mortgaged property is situated at Zirakpur, Mohali, and the SARFAESI proceedings were also instituted before the competent forums at Mohali and Chandigarh. Thus, none of the relevant connecting factors has any nexus with Delhi.

22. The Petitioner's case rests entirely on the convenience of the Petitioner to hold Delhi as the seat in the present petition. In the opinion of this Court, such convenience, by itself, cannot confer jurisdiction upon this Court. Accepting such a contention would also run contrary to the conditions required to construe a venue as the seat of arbitration, particularly when the mention of Mumbai and Chennai

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in the same clause constitutes a contrary indication against treating Delhi as the exclusive juridical seat.

23. The submission that the Petitioner was entitled to select Delhi by issuing a notice invoking arbitration under Section 21 of the Act is also misconceived. The issuance of a notice under Section 21 cannot confer upon the Petitioner a unilateral right to determine the juridical seat when no such right flows from the Agreement.

24. The reliance placed by the Petitioner on ***BGS SGS Soma* (supra*)*** is also misplaced, as the conditions laid down therein are not satisfied in the present case. Further, in ***BGS SGS Soma (supra)***, although both Delhi and Faridabad were mentioned as places for conducting the arbitration, the Supreme Court, after examining the surrounding circumstances, including the fact that the entire arbitral proceedings were conducted at Delhi and the award was also signed at Delhi, concluded that Delhi was the seat of arbitration. The present case stands on an entire different footing. The matter is still at the referral stage and there is no material to indicate that the parties had, either expressly or by their conduct, treated Delhi as the seat of arbitration. The Petitioner has also relied upon nothing beyond the mention of Delhi in the Agreement as a venue and the convenience of conducting the proceedings in Delhi.

25. The Petitioner has sought to distinguish ***Arcis Clean Energy (supra)*** on the ground that the present Agreement does not contain an exclusive jurisdiction clause. However, that, by itself, is not the test. The intention of the parties has to be gathered by reading the Agreement as a whole and examining the surrounding circumstances.

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As already discussed, neither the Agreement nor the circumstances of the present case indicate any intention to designate Delhi as the seat of arbitration.

26. In view of the aforesaid discussion, this Court is of the considered opinion that merely because Delhi finds mention amongst the three alternative places in Clause 12.11(a), the same cannot be construed as a designation of Delhi as the juridical seat of arbitration. To accept the Petitioner's contention would amount to conferring upon it a unilateral right to select the seat, in the absence of any such stipulation in the Agreement, and would effectively amount to rewriting the contractual terms at the behest of one party. Since Delhi has not been designated as the seat of arbitration, either expressly or by necessary implication, and the Petitioner has also failed in **the closest and most intimate connection test** to establish any independent territorial nexus with Delhi, this Court finds that it lacks territorial jurisdiction to entertain the present petition.

27. At this stage, the Respondent undertakes not to oppose the petition if instituted by the Petitioner before the Punjab and Haryana High Court. The said statement of the Respondent stands recorded.

28. The petition is, accordingly, dismissed on the ground of lack of territorial jurisdiction, leaving it open to the Petitioner to avail its remedies before the competent Court in accordance with law.

OM PRAKASH SHUKLA, J

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