

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/505/2026
M/S SANY HEAVY INDUSTRY INDIA PVT LTD
VS
AAKASH GUDEN AND ANR

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date :31stJuly, 2026.

Appearance:

Mr. Subhankar Chakraborty, Adv.

Ms. Harshita Nath, Adv.

...for petitioner.

The Court: Affidavit of service is taken on record.

The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitral Tribunal for adjudication of the disputes and differences which have arisen between the parties, arising out of and in connection with the Loan-cum-Hypothecation Agreement dated 17th July, 2020.

Learned counsel for the petitioner submits that the respondent No.1 availed financial assistance from SREI Equipment Finance Limited for the purchase of a HYDRAULIC CRAWLER EXCAVATOR SY210C by executing the aforesaid Loan-cum-Hypothecation agreement whereunder a sum of Rs.44,20,000/- was financed, repayable in 48 equated monthly installment of Rs.1,21,600/- each. Respondent No.2 executed the said agreement as guarantor and undertook joint and several liability for repayment of dues. It is

further submitted that by virtue of settlement agreement dated 30th September, 2021, the right, title and interest of SREI Equipment Finance Limited under the said agreement stood assigned in favour of the petitioner. According to the petitioner, the respondents committed persistent defaults in repayment of the loan. A demand notice dated 31st May, 2024 was issued recalling the loan facility and calling upon the respondents to pay the outstanding dues.

Learned counsel for the petitioner states that thereafter the petitioner invoked arbitration clause contained in the Loan-cum-Hypothecation Agreement by issuing notice under Section 21 dated 8th June, 2024. Learned counsel for the petitioner further states that the respondents neither responded to the said notice nor took any steps for constitution of arbitral tribunal to adjudicate the disputes between the parties. It is further submitted that the arbitration clause contained in the Loan-cum-Hypothecation Agreement provides for resolution of disputes between the parties through arbitration and stipulates Kolkata as the seat of arbitration.

Despite service, there is no appearance on behalf of the Respondents.

The existence of the arbitration clause in the said agreement is not in dispute. The contention of the petitioner that the disputes have arisen directly out of the Loan-cum-Hypothecation Agreement is, *prima facie*, covered by the arbitration clause contained therein. It is evident that respondents had failed to act in terms of the agreed procedure for appointment of an arbitrator.

It is now well settled principle of law that the jurisdiction of the court under section 11 of the Arbitration and Conciliation Act, 1996 is confined to a

prima facie examination of the existence and validity of the arbitration agreement.

As per section 11(6A) of the Act, 'the Supreme Court or as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall notwithstanding any judgment decree or order of any court, confine itself to the examination of the existence of an arbitration agreement'.

Accordingly, at the stage of exercising jurisdiction under Section 11 of this Act, this Court is only required to examine the existence of a valid arbitration agreement containing an arbitration clause.

In view of the same, this Court is, therefore, satisfied that the requirements under Section 11(6) of the Act stand fulfilled and that the disputes between the parties are fit to be referred to arbitration.

This Court deems it appropriate to appoint Mr. Sayan Banerjee, Advocate (Mob. No. 7044566151) as a sole arbitrator to adjudicate the disputes between the parties arising out of Loan-cum-Hypothecation Agreement dated 17th July, 2020.

The learned Sole Arbitrator shall, before entering upon the reference, make the disclosure required under Section 12(1) of the Act, subject to the provisions of Section 12(5) thereof.

The learned Sole Arbitrator shall fix his remuneration in terms of the Fourth Schedule of the Act or as may be agreed between the parties.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned arbitrator, who shall decide the same in accordance with law.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

R.D. Barua