

AP/11/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONTATA CAPITAL FINANCIAL SERVICES LIMITED
VERSUS
CD DISTRIBUTORS & ORS.

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 1ST JULY, 2022

APPEARANCE:

Mr. Swatarup Banerjee, Advocate

Mr. Avishek Guha, Advocate

Ms. Akansha Chopra, Advocate

....for the applicant

The Court:- Affidavit of service dated 25th April, 2022 indicates that the respondents are served by way of publication. Another affidavit of service dated 1st July, 2022 also indicates service of notice, yet no one is present for the respondents to oppose the present AP.

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator.

Learned counsel for the applicant has pointed out that the loan-cum-guarantee agreement dated 5th March, 2021 was executed between the parties and the said agreement contains the following arbitration clause:-

“Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No.17 of Annexure 1 hereto, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”

He has also referred to Clauses 17 and 18 of the agreement indicating that Kolkata is one of the places of arbitration and jurisdiction chosen by the parties. He has also pointed out that the respondent had committed default of payment of about a sum of Rs.18 lakhs. Hence, initially the demand notice dated 23rd July, 2021 was served upon the respondents which was not responded. Thereafter, the notice dated 8th November, 2021 invoking the arbitration clause was served which was also remained unanswered. Therefore, on the aforesaid background, prayer for appointment of arbitrator is made.

Since no one has entered appearance on behalf of the respondents, therefore, the contention of the applicant remains uncontroverted and in view of the existence of the arbitration clause and existing dispute, I am of the opinion that a case for appointment of arbitrator is made out.

Accordingly, AP is allowed. Sourav Sen, Advocate (Mob. No.9831251607) is appointed as Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)