

OD-21

ORDER SHEET
AP/40/2022
IA NO:GA/1/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

TATA CAPITAL FINANCIAL SERVICES LIMITED
-VS-
DIPANWITA BASU AND ORS.

BEFORE:
HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE: 8TH JULY 2022.

APPEARANCE:
Mr. S. Banerjee, Adv.; Mr. A. Guha, Adv., Ms. A. Chopra, Adv.; for
petitioner.

None for respondents.

THE COURT: The respondents were duly served in the matter and they had earlier appeared through Advocate. But thereafter they have stopped appearing and have also not filed any affidavit-in-opposition.

This is an application under section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act").

Learned counsel appearing for the petitioner has pointed out that a loan agreement for channel finance was executed between the parties which contained the following arbitration clause:

“12. 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 and has pointed out that Kolkata is the place of arbitration and jurisdiction.

A demand notice dated November 11, 2021 for recovery of loan and invocation of arbitration was served upon the respondents by the petitioner and the same was replied to by the respondents on November 15, 2021.

Thereafter, invoking the arbitration clause, the petitioners had served upon the respondents the notice under section 21 of the Act, dated

November 30, 2021, proposing the name of the Arbitrator and the same was also replied to by the respondents on December 8, 2021.

Since there was no consensus in respect of the name of the Arbitrator, therefore the matter did not proceed further.

The arbitration agreement and the service of the notice under section 21 of the Act by the petitioners upon the respondents as also the existence of disputes between the parties have remained uncontested before the Court as the respondents having appeared earlier, have chosen not to appear in the matter subsequently.

Since the arbitration agreement exists and the dispute also exists, therefore the prayer for appointment of Arbitrator is allowed. Accordingly, A.P. No.40 of 2022 is allowed.

Mr. Asish Senapati, a retired District Judge, is appointed as sole Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the sole 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.

A.P. No.40 of 2022 accordingly stands disposed of.

(PRAKASH SHRIVASTAVA, CJ)

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