

AP/372/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONTATA CAPITAL FINANCIAL SERVICES LIMITED
VERSUS
MAPLE FURNITURE PVT. LTD. AND ORS.

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 12TH AUGUST 2022

APPEARANCE:

Mr. Swatarup Banerjee, Advocate
Mr. Avishek Guha, Advocate
Ms. Akaansha Chopra, Advocate
Ms. Debarati Das, Advocate
... for petitioner.Mr. Sourav Roy, Advocate
Ms. Vidhi Sharma, Advocate
... for respondents.

The Court:- Counsel for the applicant has filed the affidavit of service indicating that the respondents have been duly served by way of publication.

In spite of service of notice, no one is present for the respondents.

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

Learned counsel for the applicant has submitted that channel finance facility agreement dated 20th June 2018 was executed between the applicant and the respondent no.1 and that the respondent nos.2 to 4 are the guarantors whose names figure in the agreement and they had also signed the guarantee agreements containing the arbitration clause. He has pointed out that the agreement dated 20th June 2018 contains the following arbitration clause:-

“XV. DISPUTE RESOLUTION

If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the security hereof or as to the validity, interpretation, implementation or effect of the Facility Documents or as to the rights and liability 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 or anything done or omitted to be done pursuant to the Facility Documents or otherwise in relation to the security hereof, the same shall be settled by arbitration to be held at the place as mentioned in Item no.18 of Schedule [1] 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 the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The Parties may agree to have their dispute resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act 1996.

The Facility Documents shall be governed by the laws of India. Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or proceed to recover dues from the Dealer/s under the SARFAESI Act and/or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993."

Referring to Item No.18 of Schedule 1 to the agreement, he has pointed that Kolkata is one of the places chosen by the parties for arbitration. He has also pointed out that the agreement was terminated vide communication dated 14th June 2021 and thereafter invoked the arbitration clause, notice in terms of Section 21 of the Act was sent to the respondents on 22nd March 2022, but the respondents have refused to accept it. He has also pointed out that the disputes had arisen since the respondents had failed to act in accordance with the agreement and had defaulted in making payment which was due and payable by them under the agreement.

In spite of service of notice, no one has appeared for the respondents to dispute the above contention.

Considering the aforesaid, I am of the opinion that the arbitration agreement exists and dispute has arisen and due notice in terms of Section 21 of the Act was sent. Hence, a case is made out for allowing the prayer for appointment of the sole arbitrator to resolve the dispute. Hence, the AP is allowed and Mr. Bishajib Ghosh, Advocate (Mobile No.9836461646) of this Court is appointed as sole 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 learned Arbitrator by the Registrar, Original Side forthwith.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)