

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

AP/99/2023

PRUDENT ARC LIMITED
VERSUS
TANMAY ENGINEERS AND ANR.

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

Date: 16th March 2023.

APPEARANCE:

Mr. Rohit Banerjee, Advocate
Ms. Shrayashee Das, Advocate
... for applicant.

Mr. A.P. Moulick, Advocate
Mr. S. Mukherjee, Advocate
... for respondents.

The Court:- Affidavit of service filed by the applicant is taken on record.

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

Learned counsel for the applicant has pointed out that the facility agreement dated 27th August 2020 was entered into between Ugro Capital Limited and the respondents and the said agreement contained the following arbitration clause:-

“13. GOVERNING LAW, JURISDICTION AND ARBITRATION

13.1 This Agreement shall be construed in accordance with the laws of India and subject to the arbitration clause below, shall be subject to the exclusive jurisdiction of the competent courts in Kolkata.

13.2 In the event of any dispute or difference between the parties under this Agreement, including in relation to the construction or interpretation of this Agreement, the parties shall first endeavour to settle such dispute or difference by amicable negotiations within 30 days of a written notice issued by one

party to the other party. If the negotiations do not result in a resolution of the dispute or difference, either party shall be entitled to submit such dispute or difference to arbitration. If the negotiations do not result in a resolution of the dispute or difference, either party shall be entitled to submit such dispute or difference to arbitration. The Lender shall appoint an arbitrator at its sole discretion or in accordance with the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Arbitration shall be conducted in accordance with the Arbitration Act. The seat of arbitration shall be Kolkata and the arbitration proceeding shall be conducted in English. The decision of the arbitrator shall be final and binding on the parties."

He has further pointed out that there was an assignment agreement executed between Ugro Capital Limited and the present applicant whereby the rights and liabilities under the earlier agreement were assigned by Ugro Capital Limited to the present applicant. He has also pointed out that due notice in terms of Section 21 was served upon the respondent.

Learned counsel for the respondent has not disputed the arbitration clause in the facility agreement and has fairly submitted that the sole arbitrator can be appointed to resolve the dispute between the parties preserving all the legal rights of the respondents in terms of Section 16 of the Act.

Subject to the above and considering the submissions of counsel for the parties, the prayer for appointment of the sole arbitrator is allowed and Mr. Suman Dutta, [9903402733] Advocate of this Court, is appointed as sole arbitrator to resolve the dispute between the parties, subject to submission of declaration by the proposed 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.

Since no affidavits have been called, therefore, the plea taken in the application on merit is not deemed to be accepted by the respondents.

AP is accordingly disposed of.

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

[PRAKASH SHRIVASTAVA, C.J.]

s.kumar