

OCD-4

AP/323/2023
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SREI EQUIPMENT FINANCE LTD.
Versus
ERGON INFRA PROJECT DEVELOPERS PVT. LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : June 26, 2023.

Appearance:

Mr. Sourajit Dasgupta, Adv.

Mr. Rajib Mullick, Adv.

Ms. Ayantika Saha, Adv.

The Court: The petitioner made two attempts at serving the respondents. The postal endorsement shown to the Court indicates that the respondents received the documents on 17th June, 2023. Affidavit-of-service is kept on record.

The dispute between the parties arises out of a Master Facility Agreement dated 20th September, 2019 between the petitioner as the company and the respondent no.1 by which the petitioner gave a loan of Rs.290 crores to the respondent no.1. The Master Facility Agreement was followed by a deed of hypothecation dated 27th November, 2019 which refers to the terms of the loan in the Master Facility Agreement. The respondents hypothecated four coal washers in exchange of the loan amount. The deed of hypothecation also refers to the dispute resolution clause in the Master Facility Agreement by which a Sole Arbitrator appointed by the petitioner was to resolve the disputes and differences

between the parties. The petitioner issued a termination notice to the respondent including the respondent no.1 on 12th December, 2022 for the respondent no.1 failing to comply with the payment schedule of the Master Facility Agreement. The petitioner claimed an outstanding amount of Rs.551.27 crores in the termination letter. The petitioner also invoked the arbitration clause and sent a letter under Section 21 of the 1996 Act to the respondent no.1 on 21st February, 2023 which was received by the respondent no.1 on 27th February, 2023. The respondent did not reply to the Section 21 notice.

The other respondents are the guarantors to the loan and have been made parties as the guarantors find mention in the Master Facility Agreement.

The absence of the respondent no.1, to whom the loan was advanced, does not make a difference to the dispute existing between the parties. The application, thus, fulfils requirement of Sections 5 and 6 of the 1996 Act.

Mr. Subir Sanyal, Senior Advocate (Mobile Number : 6291192601) is, accordingly, appointed as the Sole Arbitrator to resolve the disputes and differences between the parties, subject to the Arbitrator communicating his consent in the required format under Section 12 of the Schedules to the Act to the Registrar, Original Side of this Court within three weeks from date. The petitioner will communicate this order to the Arbitrator forthwith.

AP/323/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)