OCD-4

ORDER SHEET

AP/523/2023

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

TATA CAPITAL FINANCIAL SERVICES LIMITED
VS
M/S. BALKRISHNA SALES CORPORATION

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 31st August, 2023.

Appearance:
Mr. Mainak Bose, Adv.
Mr. Avishek Guha, Adv.
Ms. Debarati Das, Adv.
Ms. Ritika Pal, Adv.
…for the petitioner

Mr. Shahjahan Hossain, Adv.
Md. Salauddin, Adv.
…for the respondent

The Court: The dispute between the parties arises out of a sanction letter dated 31st October, 2020 leading to a loan agreement executed between the petitioner as a lender and the respondent as a borrower on 25th January, 2021. The petitioner gave the loan to the respondent within the framework of the Export Credit Lending Guarantee Scheme (ECLGS) on the terms that the National Credit Guarantee Trustee Company would stand as guarantor for the loan and the petitioner would be entitled to initiate recovery proceedings, which are otherwise competent and complete, against the borrower in the event of default. Clause 15(ii) of the ECLGS as updated on 29th June, 2023 provides for this.

Admittedly, the respondent defaulted in its payment obligations and the petitioner issued a notice for such default on 27th April, 2022. The parties thereafter tried to resolve the disputes through Lok Adalat but were not successful. The petitioner was hence constrained to issue a notice under Section 21 of the 1996 Act on the respondent on 23rd June, 2023.

It should be mentioned at this stage that the loan agreement of 25th January, 2021 contains an arbitration clause.

The respondent replied on 3rd July, 2023 but the letter indicates that the respondent did not have an answer to invocation of the arbitration clause for resolving the disputes between the parties.

The point raised by learned counsel appearing for the respondent that arbitration is not the advised mechanism under the Scheme is not acceptable since FAQ No. 161(A)(ii) clearly states that arbitration proceedings shall be considered as recovery proceedings under Clause 15 of the Scheme where the Money Lending Institution (MLI and the petitioner in this case) has an arbitration clause in its lending agreement and do not attract the provisions of the DRT Act, 1993. The petitioner, as the MLI, not only has an arbitration clause in the lending agreement but is also not covered as a NBFC under Section 2(d) of The Recovery of Debts and Bankruptcy Act, 1993.

Considering the petitioner's rights under the ECLGS as an MLI to initiate proceedings for recovery and the competence of an arbitration proceeding as a recovery mechanism together with the fact that there is a dispute covered by the arbitration agreement between the parties, this Court is of the view that the petitioner's application for appointment of Arbitrator must succeed.

AP/523/2023 is accordingly allowed and disposed of by appointing Mr. Amitabha Ghosh, Advocate (Mob – 9830292893) to act as the learned Arbitrator subject to the Arbitrator communicating his/her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner shall communicate this order on the learned Arbitrator by 2nd September, 2023 with the requisite details of the petitioner's advocate-on-record.

The supplementary affidavit filed by the petitioner is taken on record.

(MOUSHUMI BHATTACHARYA, J.)

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