

ORDER SHEET
AP/762/2023

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

SREI EQUIPMENT FINANCE LTD.
VS
RAVI UDYOG PVT. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 20th November, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Sariful Haque, Adv.

Mr. Rajib Mullick, Adv.

Ms. Sonia Mukherjee, Adv.

...for the petitioner

Ms. Nilanjana Adhya, Adv.

...for the respondent

The Court: Although learned counsel appearing for the respondent vehemently objects to any disputes existing between the parties, the submissions made in support of the contention make it clear that there is indeed a dispute which is required to be decided by an Arbitrator.

The facts placed before the Court include a loan facility Agreement of 2014 which was modified by way of a terms of settlement entered into between the parties on 15th March, 2017. The terms of settlement contains an arbitration clause. The petitioner had issued an earlier notice under Section 21 of the 1996 Act on 28th April, 2022 which culminated in a decision of the Hon'ble The Chief Justice, as His Lordship then was, on 1st December, 2022 holding that the notice was defective and the respondent hence could not be

said to have received a notice under Section 21 of the 1996 Act or commencement of arbitration proceedings. The petitioner sent a fresh notice under Section 21 on 22nd December, 2022 at the address mentioned in Clause 8.7 of the terms of settlement. The petitioner raised a demand of approximately Rs.7.70 crores on the respondent and nominated its Arbitrator. The respondent replied to the notice on 19th January, 2023 disputing any amount due and payable by the respondent and also alleged fraud and coercion on the part of the petitioner in the matter of execution of the terms of settlement.

Counsel appearing for the respondent submits that the respondent did not have any outstanding dues payable to the petitioner as on March, 2017 and hence the parties could not have executed the terms of settlement. It is further submitted that the petitioner did not raise a demand for any outstanding amounts before 15th March, 2017 which was the date of execution of the terms of settlement. Counsel also submits that the respondent has filed an FIR against the petitioner in the matter of execution of the terms of settlement.

As stated above, the stand taken by counsel on behalf of the parties shows that there are disputes at several levels including whether the respondent is at all liable for any payment and the relevance of the first Agreement dated 22nd June, 2014. The disputes are directly relatable to the arbitration agreement contained in the terms of settlement and the Arbitrator would hence be the fit and proper person to decide the disputes.

AP/762/2023 is accordingly allowed and disposed of by appointing Mr. Chittatosh Mukherjee, former Chief Justice of Bombay High Court, to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 22nd November, 2023 along with the requisite details of the contact person of the petitioner.

As requested by counsel appearing for the respondent, it shall also be open to the learned Arbitrator to consider whether the earlier Agreement was revived by the parties at any subsequent point of time.

(MOUSHUMI BHATTACHARYA, J.)

bp.