

OC-4

ORDER SHEET

AP/804/2023

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

SREI EQUIPMENT FINANCE LTD.
VS
E MADHUSUDHAN RAO ENGINEERS AND CONTRACTORS AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th December, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Ayan Dutta, Adv.

Mr. Rajib Mullick, Adv.

Mr. Biswaroop Ghosh, Adv.

...for the petitioner

The Court: The respondent nos. 1, 2 and 4 have been served twice. The first attempt is in October and the second on 21st November, 2023. The respondent no.3 could not be located at both times and the endorsement shown in the affidavit-of-service is that the "Addressee could not be located."

The dispute arises out of a loan-cum-hypothecation Agreement dated 27th August, 2018 by which the petitioner extended a loan of Rs.48.65 crores to the respondents. The respondent no.1 is borrower and the other respondents stood guarantors for the loan. The Agreement contains an arbitration clause with both the situs and jurisdiction pointing to Kolkata. The parties also executed a personal guarantee Agreement on the same date, i.e., 27th August,

2018, Clause 34 of which records that the petitioner inducted guarantors on the request of the respondent no.1 who executed the required documents to the satisfaction of the petitioner. The clauses in the Loan-cum-Hypothecation Agreement dated 27th August, 2018 include a dispute resolution/arbitration clause.

According to learned counsel appearing for the petitioner, the respondents are in default and an amount of Rs.102 crores is due to the petitioner. Counsel submits that the respondents have paid 16 out of the 56 monthly instalments. The outstanding amount of Rs.102 crores is on account of the principal + accrued interest.

The material shown to the Court includes a Notice issued by the petitioner on 10th August, 2023 invoking the arbitration clause and a reply given by the respondents on 20th September, 2023 denying contents of the Section 21 Notice as well as the petitioner's choice of the Arbitrator. The respondents' reply also contains a denial of the loan-cum-hypothecation Agreement and the respondents purchasing any equipment pursuant to the loan.

There is certainly a dispute between the parties which is required to be adjudicated by an Arbitrator. The contents of the respondents' reply itself bears testimony to this. The respondents have denied each and every statement in the petitioner's invocation Notice.

AP/804/2023 is accordingly allowed and disposed of by appointing Mr. Ravindra Bhat, former judge of the Supreme 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 6th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)