OCD 5

ORDER SHEET
AP-COM/750/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S. SANY HEAVY INDUSTRY INDIA PVT. LTD.
VS
YOGESH NIVRUTTI KALE AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 19th November, 2024.

*Appearance:*
*Mr. Saptak Sanyal, Adv.*
*Mr. Subhasis Pyne, Adv.*
*...for the petitioner*

The Court: As none appears for the respondents, the matter proceeds ex-parte.

This is an application by the assignee of the loan account. The respondent had executed a loan-cum-hypothecation agreement dated February 15, 2020 with Srei Equipment Finance Limited. The said agreement contained an arbitration clause. The agreement also contained another clause which made the borrower bound by any assignment or transfer and all consequences thereof, in respect of the loan account. The acceptance clause bound the borrower and the guarantor, that is, the respondent nos.1 and 2. Srei Equipment Finance Limited had sanctioned a credit facility for an amount of Rs.42,33,000/-, to be repaid in 48 instalments of Rs.1,15,310/- each. The hypothecation agreement had been transferred to the petitioner with all rights, benefits and obligations. Srei Equipment Finance Limited informed the respondent no.1 about the assignment, by a letter dated October 1, 2021. As the respondent no.1 was irregular in making payment of the instalments, the petitioner recalled the entire facility by the demand notice dated January 30, 2024, calling upon the respondent to jointly and/or severally pay a sum of Rs.28,58,382.83. In view of some errors in the demand notice, a corrigendum notice dated March 11, 2024, was issued by the petitioner. The respondents' maintained silence. The petitioner invoked arbitration by a notice dated March 28, 2024.

In my, prima facie, view the letter by Srei Equipment Finance Limited about the assignment of the loan account of the petitioner, the interpretation of the assignment clause and the acceptance by the borrower of such clause, gives a right to the assignee of the loan to raise a dispute and invoke arbitration. There is an arbitration clause. The notice invoking arbitration is also on record. Non-payment/default on and from the date of assignment of the loan by the respondent has been explained in detail and such non-payment continued from the date of assignment to March 15, 2023. Thereafter, the loan was recalled in January, 2024 with a further corrigendum notice, by the petitioner. The arbitration clause was subsequently invoked. My, prima facie, view is that the arbitration clause also stood assigned. Court refers to the decisions of ***Chloro Controls India Private limited vs. Severn Trend Water Purification Inc. and***

***ors.*** reported ***in (2013) 1 SCC 641*** and ***Cox & Kings Ltd. vs. SAP India (P) Ltd.*** reported in ***(2024) 4 SCC1***.

Further question as to whether a non-signatory can raise a dispute in this particular case, may be decided by the learned Arbitrator at the appropriate stage, if such point is raised. All objections including validity of the assignment can be raised by the respondents, before the learned Arbitrator. Mr. Sanyal submits on instruction that the assignment has never been challenged or disputed before any forum.

Under such circumstances, the Court appoints Mr. Anindya Basu, learned Advocate (Mob. No.9733300151) as the Sole Arbitrator, to arbitrate the dispute. The seat of arbitration shall be Kolkata. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration as per the provisions of the Arbitration and Conciliation Act.

AP-COM/750/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

B.Pal