

ODC-24

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

AP-COM/373/2024
[Old case no.
AP/704/2023]

SREI EQUIPMENT FINANCE LIMITED
VS
PANCHKOTI COMMERCIAL PVT LTD. AND ORS

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 1st April, 2024.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Subhankar Chakraborty, Adv.
Ms. Ruchira Manna, Adv.

The Court:- This is an application for terminating the mandate of the Arbitrator. It is submitted that at the second sitting held on 2 May, 2023, the Sole Arbitrator for personal reasons has refused to act any further as Arbitrator.

The respondent is not represented. By diverse orders, the respondents were repeatedly directed to be served. Affidavit of Service filed on behalf of the petitioner suggests that though substituted service has been effected on the respondent, the respondent remains unrepresented.

The disputes between the parties arise out of a loan agreement dated 5 April, 2020, which provides as follows;

“17. LEGAL REMEDIES FOR RECOVERY OF DUES:

In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding, the real meaning or purport hereof (“Dispute), such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 and rules framed thereunder and/or any amendment and/or re-enactment thereof from time to time, by a single named arbitrator to be appointed solely by the Lender. The venue of arbitration shall be Kolkata and the arbitration shall be conducted in English language. The Borrower and/or all the owner and/or the mortgagor of the property confirms to abide by the arbitration clause and shall always be bound and abide by the award and/or orders of the arbitrator.

Further it is stated and mutually agreed between the Parties that in the event of any dispute and differences and/or any Event of Default arising out of this agreement and its connected documents including the mortgage of the security/property and/or other securities, Srei has the discretion and option to avail any other civil and/or criminal remedies and /or legal relief in Courts, Tribunals, statutory reliefs in accordance with law and as permitted in prevailing laws, Acts and Rules framed thereunder including Insolvency and Bankruptcy laws act and rules and/or SARFAESI Act and Rules and as amended from time to time and file any mortgage suit and/or do auction for the purpose of sale and recovery of its dues and claims and accordingly enforce the mortgage and sell the mortgaged property and/or other securities in accordance with law and appropriate the sale proceeds as recovery of dues along with interest and other charges accruing thereon.”

Pursuant to the minutes dated 2 May, 2023, the petitioner had also issued a notice under section 21 of the Arbitration and Conciliation Act, 1996. By a reply dated 30 August, 2023, the respondent had responded to the same.

In view of the aforesaid, there is no reason as to why reliefs prayed for in this application ought not to be allowed. There are live disputes between the parties which require adjudication. Accordingly, there shall be an order in terms of prayer (a) of the Notice of Motion.

AP-COM 373 of 2024 stands allowed by appointing Mr. Ajoy Chatterjee, Senior Advocate, as Sole Arbitrator to adjudicate the disputes in respect of the agreement dated 5 April, 2020. This appointment is 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 Advocate on Record

of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 7 days from the date of passing of this order.

With the aforesaid directions, AP-COM/373/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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