

ORDER SHEET

AP-COM/3/2023

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

SREI EQUIPMENT FINANCE LTD.
VS
KAMDHENU ENTERPRISE AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 1st July, 2024.

Appearance:

Mr. Swatarup Banerjee, Adv. (VC)

Mr. Shariful Haque, Adv.

Mr. Rajib Mullick, Adv.

Mr. Biswaroop Ghosh, Adv.

..for the petitioner

The Court: Learned counsel for the petitioner points out that despite regular service having failed to elicit any response from the respondents, substituted service was directed, in pursuance of which newspaper publication has been made, which is annexed to the affidavit of service filed in Court today. It transpires therefrom that despite the notice having been served by way of substituted service/publication and previous service of notice at the relevant address, none appears for the respondents at the time of call.

In the present matter, initially the petitioner had appointed an Arbitrator unilaterally. However, upon being apprised of the latest amendments to the Arbitration and Conciliation Act, 1996, the learned Arbitrator chose to withdraw from the matter. Accordingly, the present application has been filed, compositely under Sections 11 and 15 of the

1996 Act, for appointment of fresh Arbitrator to resolve the disputes between the parties.

I find from Annexure I at page 89 of the present application as well as from the subsequent Annexures that a notice under Section 21 of the 1996 Act was issued on the respondents on August 8, 2023, invoking the arbitration clause in the agreement between the parties. The said loan and hypothecation agreement, in Clause 9.11 thereof, provides for dispute resolution by way of arbitration. As per the said clause, any disputes and/or differences arising out of or in connection with the agreement during its subsistence or thereafter between the parties including any disputes and differences relating to the interpretation of the agreement or any clause thereof the adjudication will be resolved by arbitration in accordance with the 1996 Act.

In view of the nature of the present disputes coming under the purview of the said clause and the disputes being inherently arbitrable otherwise, there cannot be any further impediment to appoint an Arbitrator.

Accordingly, AP-COM/3/2023 is allowed, thereby appointing Justice Md. Nizamuddin (Retired), as the sole Arbitrator to resolve the dispute between the parties, subject to a disclosure being obtained from the said learned Arbitrator in terms of Section 12 of the Arbitration and Conciliation Act, 1996. The remuneration of the learned Arbitrator shall be decided by the Arbitrator within the framework of the Arbitration and Conciliation Act, 1996, read with its Schedules.

(SABYASACHI BHATTACHARYYA, J.)