ORDER OC – 19

IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE

AP-COM/16/2025

M/S. UGRO CAPITAL LIMITED
VS
ITAL TECH & ORS.

BEFORE:
THE HON'BLE JUSTICE SHAMPA SARKAR
Date : 7th April 2025.

APPEARANCE:

Mr. Paritosh Sinha, Advocate
Mr. K. K. Pandey, Advocate
Ms. Pooja Sett, Advocate
Ms. Mallika Bothra, Advocate
... for petitioner.

1. Affidavits of service are taken on record. Despite service, none appears on behalf of the respondents.

2. As the respondent No.1 is a non-registered partnership firm, this Court had directed both the partners of the said partnership firm to be added as respondents. Such addition was carried out. It also appears that service upon both the partners is complete.

3. The petitioner is a non-banking financial services company. Credit facility for a sum of Rs.1,25,00,000/- was extended to the respondents. The disbursement of the loan was to be made directly to the suppliers of the respondent No.1. Disbursement was supposed to be done on submission of disbursement documents i.e., approved invoices, delivery proof as per the credit sanction letter dated June 16, 2023, etc. The tenure of the Facility was 12 months, wherein

each tranche was repayable within respective due dates of respective invoices, to a maximum period of 90 days.

4. The parties agreed to the conditions mentioned hereinabove and a facility agreement was entered into. The respondent No.1 was the borrower and the respondent Nos. 2 and 3 were co-borrowers. According to the petitioner, the borrower and the co-borrowers were jointly liable.

5. The loan was disbursed in multiple tranches. On account of failure to repay the loan amount and the interest as also additional interest, the loan agreement was terminated on July 9, 2024 and the entire loan was recalled. The respondents were called upon to make payment of an aggregate sum of Rs.89,58,574/-.

6. An application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed being AP 932 of 2024. The petitioner invoked arbitration on July 16, 2024. The dispute between the parties arose out of the said Facility Agreement dated July 10, 2023. Upon receipt of the notice invoking arbitration, the respondents replied to the same and denied the contents and correctness thereof. The respondents also refused to accede to give consent for conduct of arbitration proceeding through SAMA. Hence, this application has been filed.

7. It is a matter of record that three bank accounts maintained by the respondents have been directed to be marked ‘debit freeze’ as an interim measure, while disposing of the application under Section 9 of the Arbitration and Conciliation Act, 1996, filed by the petitioner.

Accordingly, the petitioner prays for appointment of an Arbitrator as the mechanism provided under the Facility Agreement has failed. Clause 15.2 of the Facility Agreement mentions about settlement of dispute or difference through arbitration, which shall be administered by an institution recognized by the Government of India. Such institution will appoint an arbitrator for conducting the arbitration proceedings under the provisions of the Arbitration and Conciliation Act, 1996. The petitioner suggested an institution, which was not accepted by the respondents. Thus, the application has been filed before this Court as the above-mentioned procedure failed.

8. The application is disposed of by appointing Ms Deblina Lahiri, learned Advocate, Bar Library Club, as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

S. Kumar / R.D. Barua