OCD-4

AP-COM/28/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISON

TATA CAPITAL LIMITED
VS
INTECH SAFETY PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 25th February, 2025.

<u>*Appearance:*</u>
Mr. Jit Ray, Adv.
Mr. Aharnish Ghosh, Adv.
. . .for the petitioner.

Mr. Amritam Mandal, Adv.
Mrs. Swati Agarwal, Adv.
. . .for the respondents.

The Court:

1. This is an application for appointment of a learned Arbitrator. Such application has been made on the strength of Clause 9 of the Agreement for business loan. Clause 9 provides that any dispute, difference or claim arising out of the facility or as to the interpretation, validity, implementation or effect of the facility documents or as to the rights and liabilities of the parties under the facility agreement shall be settled by arbitration to be held at Kolkata.
2. Learned advocate for the petitioner submits that the business loan, although availed of by the respondents, was not repaid in the manner provided in the agreement. Financial assistance in the form of over draft

loan for a sum of Rs.50,37,573/- for expansion of business was extended to the respondents. Loan agreement was entered into on October 21, 2022. The tenure of the loan was 48 months (revolving facility). Apart from a few monthly instalments, the respondents committed repeated defaults. Accordingly, a loan recall notice dated October 26, 2024 was issued. Despite having received the loan recall notice, the same was not acted upon and accordingly on November 7, 2024, a notice was served by the petitioner upon the respondents invoking the Arbitration Clause. As on October 22, 2024 the petitioner alleges to be entitled to a sum of Rs.46,09,680/-. It is further submitted by the petitioner that, a list of proposed Arbitrators was supplied to the respondents, but the respondents did not act upon the same.

3. Mr. Mondal, learned advocate for the respondents has objected to this application on the following ground:

   a) Copy of the agreement for business loan was never served upon the respondents.

   b) A notice invoking arbitration was not served upon the respondents.

   c) The petitioner was a non-signatory to the agreement, and cannot file this application.

   d) The calculations were faulty.

4. Mr. Mondal relies on the decision of *M/s. Flowmore Pvt. Ltd., New Delhi versus U.P. State Industrial Development Corporation Ltd., Kanpur and Others.* reported in *1999 SCC Online ALL 1620*.

5. Heard learned advocates for the respective parties. Pursuant to an order dated November 24, 2023, passed by the National Company Law Tribunal Mumbai, Tata Capital Financial Services Limited and Tata Cleantech Capital Limited merged with Tata Capital Limited, along with all the properties, assets, rights, benefits, interest, duties, obligations, liabilities, contracts, agreements, securities etc. with effect from 1st January, 2024. Thus, prima facie, it appears that the petitioner stepped into the shoes of Tata Capital Financial Services Limited. In the recital of the agreement, it is provided that the expression 'lender' would include the successors and assigns. Upon merger, all rights, liabilities, assets, properties etc. of the transferor companies merged with the petitioner. When the loan recall notice was issued, the transactions and the effect of merger were informed to the respondents. The loan recall notice is available at page 23 of application.

6. Although, Mr. Mondal submits that neither the loan recall notice nor the notice under Section 21 were received by the respondents, the postal track reports indicate that the notices were sent to the last known address of the respondents, as was mentioned by the respondents in the agreement itself. Moreover, it appears from the postal receipts that, on the first day when the articles were out for delivery, the door was locked, so intimation was served. Again, the article was out for delivery which met with a similar fate. The postal article remained unclaimed by the respondents despite intimation being served on two occasions. When the application was filed as well, the respondents did not appear despite service. This Court

directed insertion to be made in the newspapers, which was done. Thereafter, Mr. Mondal appeared. As per Section 3 of the Arbitration and Conciliation Act, 1996, any written communication would be deemed to have been received, if it is delivered to the addressee personally or to his place of business or mailing address and if none could be found after reasonable enquiry, a written communication would be deemed to be received, if it was sent to the addressee's last known place of business, habitual residence or mailing address by registered letter. In my view, Section 3(b) has been adequately complied with in respect of service of the notice invoking arbitration.

7. With regard to the other contentions of Mr. Mandal that the agreement was not served upon the respondents by the petitioner, thus, respondents did not have any liability or obligation to comply with the terms and conditions of the agreement or that the right of the petitioner to claim the amount due was not part of the merger and all other such other objections are triable issues, which have to be decided by the learned Arbitrator.

8. Secondly, with regard to the decision in *M/s. Flowmore Pvt. Ltd., New Delhi* (supra), this Court finds that the Hon'ble Allahabad High Court held that upon merger, even if the contract stood obliterated with effect from the transfer date, the same would not affect the liability of the company if the breach of the contract took place prior to the transfer date. I find from the records that, the transfer date was January 1, 2024. The default also occurred prior thereto. Moreover, whether the said decision will apply to the facts of this case, must also be an arbitrible issue, as the decision on

the right of the claimant will have to be taken. The provisions of the Arbitration and Conciliation Act and the recital of the deed, which describes the 'lender' prima facie, leads this Court to hold that the petitioner can claim reference to arbitration. The admissibility of the claim will be decided by the learned Arbitrator, as an issue. The referral court's jurisdiction is to examine whether there is an arbitration agreement or not. In my view, there is an arbitration agreement under Clause 9, of the agreement which is set out hereunder:

> "***9. Arbitration***
>
> *If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No.13 of Annexure 1 hereto in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors."*

9. The method and mechanism for appointment has failed in view of the fact that unilateral appointment of an Arbitrator from a curated panel of the petitioner is not permissible in law. Thus, the petitioner has rightly approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

10. Accordingly, the Court appoints Mr. Pranit Bag, learned Advocate (Mob. No.8697171434), 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 own remuneration as per the Schedule of the Act.

11. AP-COM/28/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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