

OCD –15

ORDER SHEET

APOT/11/2025
IA GA 1 of 2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

GUPTA BROTHERS AND OTHERS

VS

UGRO CAPITAL LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 5th February, 2025.

Appearance:

Mr. Pratik Barot, Adv.
... for the petitioner
Mr. K.K. Pandey, Adv.
...for the respondent

The Court: An interim order dated October 15, 2024, passed by the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 1996 Act), is under challenge. The interim order of injunction was passed against the petitioner, by an arbitrator who was unilaterally appointed by the respondent. Although, the respondent contends that an opportunity to choose an arbitrator from the panel of an independent dispute redressal institution recognized by the Government of India, namely,

Odrways Solutions Private Limited (Sama) was extended to the petitioner, the specific contention of the petitioner is that, no such notice had been received by the petitioner, calling upon the petitioner to nominate an arbitrator from the panel of the said online dispute resolution institution, i.e., Sama. The petitioner contends that Sama is not recognized as an institution in terms of Section 2(ca) of the 1996 Act. Neither the High Court at Calcutta nor the Supreme Court, recognized the said institution under the 1996 Act. It is next contended that, the appointment of Mr. Anilesh Tiwari was not a mutual choice. Even assuming that the parties had agreed to 'Sama' as an independent dispute resolution platform, the appointment of the sole arbitrator from the panel of Sama should have been done mutually. Such contention has been put forward by the petitioners, by filing an application before the learned Arbitrator, seeking dismissal of the proceeding on the ground of lack of jurisdiction. However, the petitioners have not yet prayed for termination of mandate by filing an application under Section 14 of the 1996 Act.

It appears to this Court that while disposing of the application under Section 17 of the said Act, the learned Arbitrator passed mandatory directions, thereby, permitting the respondent to take over possession of the secured assets with the assistance of the Officer-in-Charge of the police station, within whose jurisdiction the assets were located. The respondent was also permitted to

make an inventory of the assets and the articles. Further direction was passed upon the petitioner to disclose on oath, the details of all assets, fixed deposits, shares and other receivables linked to three PAN cards. In my view, such directions amount to allowing the final reliefs claimed by the respondent, at the interim stage.

Under such circumstances, the order dated October 15, 2024 is partly set aside. The respondent shall not take over possession of the assets. The petitioners are not required to hand over the same. The petitioners will retain custody thereof. However, the secured assets which are in the custody of the petitioners, shall be retained in good condition and no third party rights will be created. Inventory, as directed can be made by the respondent to ensure that the assets are well-maintained. Such inventory shall be made in the presence of the petitioners' representatives. The petitioner shall be restrained by an injunction from alienating, encumbering or creating third party interest in respect of the assets and articles which form part of the secured assets, till disposal of the arbitration proceeding. The other direction to disclose the details of the property, bank accounts, fixed deposits, shares and other receivable is also set aside. In order to protect the interest of the respondent, this Court further injuncts the petitioners from dealing with any of

their immovable assets, even if they do not form part of the secured assets, till disposal of the proceeding pending before the learned Arbitrator.

The appeal and the application are accordingly disposed of.

The petitioners may take steps in accordance with law.

(SHAMPA SARKAR, J.)

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