OCD 5 & 6

ORDER SHEET

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

AP-COM/54/2025

BENITA INDUSTRIES LIMITED AND ANR.
VS
SREI EQUIPMENT FINANCE LIMITED

AP-COM/55/2025

BENITA INDUSTRIES LIMITED AND ANR.
VS
SREI EQUIPMENT FINANCE LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th February, 2025.

Appearance:
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Sohom Kr. Roy, Adv.
Mr. Rahul Kr. Singh, Adv.
Mr. Subhajit Das, Adv.
…for the petitioners

Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Mr. Sariful Haque, Adv.
Mr. Ankush Majumdar, Adv.
Ms. Shilpa Das, Adv.
…for the respondent

The Court: These two matters are taken up together as similar questions are involved and the parties are the same. The petitioners are borrowers and guarantors in respect of the two loan agreements executed by them, with the respondent. The loan agreements were entered into between the parties on different dates. In terms of the said agreements, the petitioners were required to pay the principal and interest as per schedule of the instalments set out in the Annexure to the agreements. The agreement contained an arbitration clause for settlement of disputes that would arise out of those two agreements. Clause 9.11 provided that disputes and/or differences arising out of or in connection with the agreement during the subsistence or thereafter between the parties, including disputes and differences relating to the interpretation of the agreement or any clause thereof, shall be adjudicated by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The parties submitted to the exclusive jurisdiction of the courts at Kolkata, under Clause 9.10 of the subject agreement. Schedule VII of the agreement provided the details of the assets, facility, security deposit, other payments and addresses of the customer as also the guarantor. Annexure II to Schedule VII contained the repayment schedule. Accordingly, the monthly payment was to be made as per the instalments contained in Annexure II of Schedule VII. The respondent issued demand notices against each of the agreements, with the details of the dues payable by the petitioners. The overdue instalments, overdue charges and other amounts payable were indicated in a tabular form in each of those notices.

The petitioners were called upon to make the payments, failing which the respondent reserved the right to recall the entire loan in respect of those two agreements. The respondent also reserved the right to approach the appropriate authority under the Insolvency and Bankruptcy Code, 2016. Further contention of the respondent was that, if the borrower failed to liquidate the outstanding dues within the stipulated time as prescribed in the demand notices, the guarantee extended by the guarantor would be invoked and the respondent would be constrained to exercise all rights as conferred under the agreement against the borrower as well as the guarantor, apart from the initiation of proceedings under the IBC. Notices were issued calling upon the petitioners to pay off the dues and the respondent also put the petitioners on further notice that, continued failure to repay the loan would result in prohibition of the petitioners from enjoying the securities which were in the nature of movable assets, i.e, construction equipments. The said notices also contained the details of the agreement number, the start date of the agreement, the amount of credit facility extended, overdue instalments, overdue charges and the total amount payable.

The petitioners replied to the notices and alleged that the calculations of the respondent were incorrect. In the absence of any dues against the principal amount, the interest components could not be so exorbitant.

Mr. Sirsanya Bandopadhyay, learned advocate for the petitioners has pointed out the notices in which the column under the “principal due and payable” had been kept blank. According to Mr. Bandopadhyay, those notices will prove the fact that, according to the respondent, no amount was due and payable towards the principal amount extended by the lender. The calculation of overdue charges etc. was imaginary, fictitious and exploitative as per Mr. Bandopadhyay’s contention. The respondent was called upon by the petitioners time and again to provide the calculation, but the respondent failed to do so. Such failure can only be attributed to a dishonest attempt on the part of the respondent to extract money which are actually neither due nor payable. The break ups were not provided whereas, enormous amounts were claimed towards unpaid dues. Being apprehensive of the conduct of the respondent and being anxious of the fact that the respondent could repossess the assets at any time, the applications have been filed for certain preventive and protective measures, in the nature of interim reliefs. According to Mr. Bandopadhyay, unless the break ups are supplied in respect of each of the loan agreements, the respondent should not be allowed to proceed either against the assets or against the petitioners by initiating legal proceedings, on the basis of fictitious dues. The conduct of the respondent in not supplying the break ups should be taken as an indication of material suppression, inasmuch as, such conduct was beyond all ethical standards. The petitioners justifiably apprehend that the respondent will take measures in respect of the securities, without proper legal procedure.

Mr. Swatarup Banerjee, learned advocate for the respondent submits that, the loan recall notices have not yet been issued. The prayers cannot be allowed by this Court for the simple reason that, a party cannot be prohibited from taking recourse to law. Only demand notices had been issued and the respondent had reserved the right to initiate proceedings under the IBC as also invoke the guarantee. All these steps are permissible in law and the right to invoke the guarantee has been provided in the agreement itself. Mr. Banerjee further contends that the principal due was not reflected in the notices for the simple reason that, the repayment schedule being Annexure II to Schedule VII provided for payment by monthly instalments. The instalment amount included the principal as also the interest component. The instalments were overdue. Such amounts, together with penal charges and other charges payable by the petitioner had now gone beyond 21 crores. It is further submitted that the notices which are the subject matter of these applications were demand notices and the respondent had reserved its right to take proper legal steps.

Under such circumstances, an order of any restraint on any action that the respondent might take in future, is not permissible by invoking the provisions of Section 9 of the Arbitration and Conciliation Act, 1996.

Heard the learned advocates for the respective parties. Injunction, as prayed for, can be issued on three broad parameters, i.e., prima facie case, balance of convenience and inconvenience and irreparable loss and injury. Prima facie, from the records, this Court is satisfied that the repayment schedule was not adhered to by the petitioners. The monthly instalments included the principal and the interest component. Thus, the demand notices did not separately specify the principal and interest due. The notices provided the overdue instalments, overdue penal charges and other charges. Quite understandably, the principal and the interest component were not specified in each of these cases because the monthly instalments included both principal and interest. This is, prima facie, available from the records.

Thus, the first contention of Mr. Bandopadhyay that nothing was due and payable towards the principal amount and as such, the interest component could not have gone into crores, in my prima facie view, is based on an erroneous understanding of the demand notices and also misinterpretation of the terms and conditions of the loan agreements. The questions raised by Mr. Bandopadhyay as to the exorbitant amount claimed and the miscalculation, are arbitrable issues. The dispute is with regard to the amount claimed and petitioners contend to have repaid majority of the dues under the loan agreements. No payment schedule is forthcoming from the side of the petitioiners. The loan agreements also provide for repossession of the assets in case of failure of the petitioners to repay the loan in terms of the schedule. Thus, a blanket restraint on the respondent from taking any steps towards repossessing the assets will be contrary to the terms of the agreements and this Court cannot pass such order.

Finally, this Court does not find from the records that the loan has either been recalled or any notice has been received in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. However, the respondent informed the petitioners that it would be constrained to proceed against the petitioners under the available laws. What the respondent will do in future regarding initiation of other legal proceedings, cannot be foreseen by the Court. A blanket injunction on the respondent from taking recourse to the provisions of law, cannot be passed. However, balance of convenience and inconvenience and irreparable loss and injury persuades this court to grant some kind of protection to the petitioners, by injuncting the respondent from repossessing the secured assets lying in the custody of the petitioners, on the condition that the petitioners make some payments. It appears that in respect of the two loan agreements, the total dues are more than Rs.21 crores. The petitioners deny the calculation, but records prima facie reveal that there are outstanding dues.

In order to enable the petitioners to continue with their business by using the equipments which were purchased out of the credit facility extended by the respondent, the Court deems it fit to direct payment of Rs.2 crores in two equal monthly instalments. First of such instalment shall be paid within 5th March, 2025 and the other within 5th April, 2025. The payment and acceptance shall be without prejudice to the rights and contentions of the parties and the final adjudication of the amount payable shall be made by the learned Arbitrator, to be appointed in accordance with the provisions of law. It is a matter of record that the notice invoking arbitration has already been issued. The respondents shall not repossess the assets upto March 5, 2025. Thereafter, this injunction will continue for a further period upto April 5, 2025, if the payment as directed is made within March 5, 2025.

The interim order so passed will continue upto May 15, 2025, if the payment of the second instalment is made within April 5, 2025. The petitioners will be entitled to renew their prayers for interim reliefs before learned Arbitrator in accordance with law;

The petitioners will take steps in accordance with law for appointment of a learned Arbitrator.

AP-COM/54/2025 and AP-COM/55/2025 are, accordingly, disposed of.

In case of default, the respondent shall be entitled to take all measures permissible in law and in terms of the contract.

The issue as to whether the loan agreements should be rescheduled upon payment of such money etc., is not gone into and left to the parties to negotiate.

(SHAMPA SARKAR, J.)

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