OCD-12 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION

AP-COM/84/2025

L & T FINANCE LTD.
VS
ANNAPURNA ENGINEERS & ORS.

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

Appearance:
Mr. Ritoban Sarkar, Adv.
Ms. Shrayashee Das, Adv.
Mr. Rohan Kumar Thakur, Adv.
Mr. Tridibesh Dasgupta, Adv.
...for the petitioner.

Mr. Tanmoy Sett, Adv.
Mr. Sagnik Bhattacharya, Adv.
. . .for the respondents.

The Court : This is an application for injunction filed by the lender, on the failure of the borrowers to repay the unsecured loan in terms of the repayment schedule.

The petitioner claims to have extended a loan amount of Rs.35 lakhs. The said amount was to be repaid in 60 monthly instalments, commencing from February 3, 2023 and ending on January 3, 2028. The tenure of the loan was not completed, but on account of default allegedly committed by the respondents, a loan recall notice was issued. The contract was terminated. The petitioner claims to be entitled to more than Rs.34 lakhs against the said loan. The loan agreement provides for settlement of disputes by arbitration and also provides that the courts of Kolkata would have exclusive jurisdiction on any issue arising out of the said agreement.

Mr. Sarkar, learned Advocate for the petitioner submits that the law permits the court to direct the defaulting borrowers to secure the sum payable and, as such, prays for attachment of the bank account of the respondent.

Mr. Sett, learned Advocate for the respondents submits that the tenure of the loan is not yet over. The respondents were regularly making payments. Some default occurred on account of financial crisis. The respondents undertake to repay the amount due, if some time is allowed.

This Court, upon balancing the prima facie case, irreparable loss and injury etc. is of the view that the unsecured loan of the petitioner cannot be secured by attaching the bank account, or by passing a mandatory order to pay the alleged amount, without proper adjudication. Admittedly, the tenure of the loan was not over, when the contract was terminated. The respondents have undertaken to repay the defaulted amount, provided an extended time is allowed. Only when a strong prima facie case is made out, the balance of convenience will be in favour of grant of the interim reliefs. The court exercising power under Section 9 of the Arbitration and Conciliation Act, 1996, should, prima facie, be satisfied that proof of actual attempts on the part of the respondents to defeat the right of the lender to realize the defaulted amount is available from the records. There must be indication of a strong possibility of diminution of assets. A mandatory direction upon the respondents to furnish security to the tune of Rs.34,21,892/-, cannot be granted as a matter of right, in the facts and circumstances of the present case and in view of the submissions made by the respondents. Moreover, the respondents also deny the calculation of the petitioner and submit that the amount payable has not been correctly depicted in the loan recall notice.

The petitioner is, however, entitled to some kind of protection to ensure that the respondents do not escape their liability under the contract and, thereby, commit repeated breach.

Under such circumstances, this application is disposed of by directing the respondents to pay a sum of Rs.2 lakhs within a period of ten days from date and approach the bank within a week from such payment, with their proposal for rescheduling the loan or for a further repayment schedule.

In the event of failure of the respondents to either approach the bank within the time mentioned hereinabove or in the event of failure to pay the amount as directed, the bank shall be at liberty to approach this Court for further orders.

The bank shall proceed in accordance with law, for appointment of an Arbitrator, in terms of the dispute resolution clause.

(SHAMPA SARKAR, J.)