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ORDER SHEET
AO-COM/9/2025
IA NO:GA-COM/1/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

BINOY TRADING COMPANY AND ANR.
VS
TATA CAPITAL FINANCIAL SERVICES LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th August, 2025.

Appearance:
Mr. Bratin Kumar Dey, Adv.
Ms. Anjana Banerjee, Adv.
Mr. Subhankar Banerjee, Adv.
…for the petitioner

Mr. Avishek Guha, Adv.
Mr. Ankush Majumder, Adv.
Mr. Adipta Kumar Pandit, Adv.
…for the respondents

The Court:

1. The appeal arises out of an interim order dated November 22, 2025 passed by the learned arbitrator. The learned arbitrator, upon considering the rival contentions of the parties and upon taking into account the admitted position of extension of loan/credit facility by the respondent to the appellant and default in repayment thereof, by an interim order imposed a second charge on the personal property of the

petitioner being premises no.4A/1, Tangra, Second Lane, Kolkata – 700 046, P.S.- Entally, Ward No.58, Kolkata Municipal Corporation.

2. Mr. Dey, learned advocate for the petitioner submits that the IDFC First Bank Limited had a first charge on the property and the said bank should have been impleaded in the proceeding, before any order attaching the property could be passed. The learned Arbitrator considered such prayer but rejected the same with reasons. It was held that the bank was neither a necessary nor a proper party. The bank was not a signatory to the agreement between the parties, and the learned Arbitrator did not have jurisdiction to decide any issue between the appellants and the bank. The loan agreement was executed between the respondents and the claimant. The adjudication before the learned tribunal was restricted to the disputes arising out of the loan agreement and as such, adding the bank would be beyond the scope of the reference.

3. This point is taken up for consideration. Under Section 2(1)(h) of the Arbitration and Conciliation Act, 'party' was defined as, party to an arbitration agreement. By judicial pronouncements, the definition of party has been expanded to include such parties, who either expressly or by their conduct seek to be bound by the underlying contract or the arbitration agreement, meaning thereby, parties intrinsically or intricately connected with the contract, even if they are non-signatories to the contract. In the instant case, the IDFC First Bank Limited has a claim against the appellants and the bank enjoys a charge on the

property. Neither is the bank intrinsically connected with the subject agreement nor has the petitioner been able to demonstrate that the bank is in any way bound by the arbitration clause.

4. Thus, I do not find any reason to interfere with the order on such finding of the learned Arbitrator that, the IDFC First Bank Limited is neither a necessary nor a property to the proceeding. The learned Arbitrator took into consideration the claim of the bank and protected the same.

5. With regard to the second point raised by Mr. Dey that the order of the learned tribunal amounts to an attachment before judgment, which was not permissible in law, I am of the view that the rigours of Order 38 Rule 5 of the Code of Civil Procedure may not be strictly applicable in proceedings under the Arbitration and Conciliation Act. The said Act is a special statute, providing an alternative dispute redressal mechanism for settlement of disputes arising out of commercial transactions. The act has been promulgated for quick and speedy redressal of disputes by a private tribunal chosen by the parties. Under such circumstances, business commonsense persuaded the learned Arbitrator to pass the interim order, in order to protect and secure the money. In the facts of the case, neither the extension of credit facility nor the default are in dispute. The appellants may not agree with the quantum of the claim, but they are not in a position to deny breach and /or violation of the repayment schedule. The learned Arbitrator, upon balancing the convenience and inconvenience of the

parties, deemed it fit to protect the lender to the extent that there shall be a second charge on the property, after the charge of IDFC First Bank was liquidated. This protection was guided by the logic that the property may be valued at a higher amount and fetch substantial money upon sale. Even after the first charge of the IDFC First Bank was paid off, the lender would have the means to satisfy the award from the excess. Moreover, the learned tribunal protected IDFC First Bank's claims by appointing the owner of the property as a receiver, to clear off the first charge of IDFC First Bank Limited and to hold the remaining asset arising therefrom or to hold the remaining sale proceeds if the property was sold in execution of any decree to liquidate the first charge, after the bank had satisfied such decree. The owner was restrained from dealing with the portion of the property or the assets which would remain after liquidation of the first charge.

6. The order is well reasoned, and the balance of convenience and inconvenience have been equally weighed. The learned Arbitrator exercised his discretion judicially. The order is neither perverse nor patently illegal. In ***Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta*** reported in ***(2019) 2 SCC 1***, the Hon'ble Apex Court held that the appellate court could not re-weigh the evidence. Intervention was justified if the arbitrator's discretion was either arbitrary or capricious or perverse or without jurisdiction. The order impugned does not call for any interference. The order has not created any immediate hardship, to the appellants because they are still in

possession and are enjoying the property. The learned Arbitrator ensured that in the event an award is passed in favour of the claimants, the same shall not be rendered a paper decree.

7. Parties are at liberty to request the learned arbitrator to complete the proceedings expeditiously.

8. The appeal and the connected application are disposed of.

(SHAMPA SARKAR, J.)

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