

OCD 11

ORDER SHEET
AP-COM/99/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

TATA CAPITAL LIMITED
VS
MAA JWALA FUEL CENTRE AND ORS.

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

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Ms. Ankita Agrahari, Adv.
Mr. Ankush Majumdar, Adv.
Mr. A. K. Pandit, Adv.
...for the petitioner

The Court: Affidavit of service is taken on record. Despite service, none appears on behalf of the respondents.

The petitioner is a non-banking finance company. A Scheme of Arrangement was approved by the National Company Law Tribunal, Mumbai Bench, between Tata Capital Financial Services Limited and Tata Cleantech Capital Limited as transferors and Tata Capital Limited as transferee. The petitioner has now stepped into the shoes of Tata Capital Financial Services Limited. Tata Capital Financial Services Limited granted a loan facility to the tune of Rs.85,00,000/- to the respondent in the nature of a Channel Finance Facility at the rate of interest of 11% per annum. A sanction letter dated March 18, 2021, was countersigned by the respondent at the branch office of the

petitioner, which is within the ordinary original jurisdiction of this Court. The said transaction culminated into a Loan-cum-Guarantee Agreement for Channel Finance dated April 16, 2021. The said Channel Finance agreement along with the Registered Master Terms and Conditions of Channel Finance dated March 31, 2018 exclusively bound the parties to the rights and liabilities arising therefrom.

The respondent no.1 is the borrower and the respondent no.2 is the sole proprietor. The respondent no.3 is the guarantor. On the request of the respondents, the extension of the tenure of the facility was granted till May 8, 2024. Upon completion of the tenure of the aforementioned extension, the respondents once again requested the petitioner for renewal. The petitioner, by a letter dated May 16, 2024, granted one more extension till June 14, 2024. A sole proprietorship declaration, as to constitution, was also executed on behalf of the respondent no.1. Although the respondents did make some sporadic payments, it is alleged that the respondents failed to adhere to the repayment schedule. Several requests were made by the petitioner for payment of the alleged outstanding amounts, but the respondents only made a few intermittent payments. The account of the respondent no.1 was classified as Non-Performing Asset (NPA) on September 7, 2024 and a sum of Rs.81,70,160.53/- was due and payable as on October 28, 2024. The disputes and differences inter se the parties arose out of the Loan-cum-Guarantee Agreement for Channel Finance dated April 28, 2023 read with the Registered Master Terms and Conditions of Channel Finance dated March 31, 2018. The Loan-cum-Guarantee Agreement for Channel Finance dated April 28, 2023, contains an arbitration clause. The petitioner, vide the loan recall notice dated November 11, 2024 terminated the facility and asked the respondents to make payments. Even after receiving the

loan recall notice dated November 11, 2024, the respondents allegedly neglected to repay the outstanding dues. Finding no other alternative, the petitioner invoked the arbitration clause by a notice dated December 27, 2024.

Despite service, none appears on behalf of the respondents. Under such circumstances, the Court proceeds in the absence of the respondents. The arbitration clause is available from the documents. The notice invoking arbitration is also available from the documents. Under such circumstances, this Court is of the view that the application deserves to be allowed and a learned Arbitrator should be appointed to adjudicate the disputes between the parties, leaving all issues with regard to the claim, arbitrability of the disputes, objection as to the limitation and all other objections that may be available to the respondents, open and to be decided by the learned Arbitrator. The clause also provides that the seat of Arbitration is Kolkata. The procedure mentioned in Clause 12 is no longer available as the company cannot unilaterally appoint an Arbitrator. Thus, this Court appoints Ms. Debjani Roy, learned Advocate, Bar Library Club, as the Arbitrator, to arbitrate upon the dispute between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix her own remuneration as per the Schedule of the Act.

AP-COM/99/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)