

OCD-10

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/108/2025

M/S. ELECTRONICA FINANCE LIMITED
VS
MR. ANUJ KHURANA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 24th February, 2025.

Appearance:
Mr. Sayan Ganguly, Adv.
Ms. Sormi Datta, Adv.
Mr. Sumit Chowdhury, Adv..
For the petitioner

The Court : Affidavit of service is taken on record. Although the firm has not been served, the proprietor and the other respondents have been served.

Under such circumstances, this Court takes up the matter in the absence of the respondents, as they do not appear before this Court despite service.

The case run by the petitioner is that, the petitioner is a non-banking finance company. The respondent nos. 2, 3 and 4 approached the petitioner for a business loan. Accordingly, the loan was sanctioned for a sum of Rs.1,60,43,389/-. An agreement was, accordingly, executed on March 9, 2022. Clause 13.5 of the said agreement contains an arbitration clause. The loan

provided to the respondents carried an interest of 16% per annum. The tenure was for 60 months. The loan was to be repaid in 60 monthly instalments. For the purpose of securing the loan, five machines were hypothecated.

The respondents allegedly paid few instalments, but majority of the instalments, i.e., 6th to 43rd, remained unpaid. The last payment was made on October 31, 2023. On February 27, 2024, the learned advocate for the petitioner issued a demand notice asking the respondents to hand over the machines or make payment for a sum of Rs.9,56,154/-.

In spite of notice dated February, 27, 2024, the respondents failed and neglected to repay. On January 7, 2025, the petitioner claimed that a sum of Rs.1,84,93,250/- along with interest of Rs.19,36,984/- was payable.

On November 12, 2024, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 and the learned Judge 13th Bench, City Civil Court passed an order appointing a Receiver. By a notice dated December 6, 2024, the petitioner commenced arbitration. By the said notice, the petitioner had nominated sole Arbitrator and requested the respondents to submit to the jurisdiction of the Arbitrator. The venue and the seat of Arbitration was chosen as Kolkata by the petitioner, in terms of the Arbitration Clause, which allowed the lender to carry proceedings in any other court of competent jurisdiction.

The arbitration clause is quoted below:

“All the disputes, or differences arising between the parties hereto as to the interpretation of this Agreement or in connection with this agreement or any covenants or conditions thereof or as to the rights,

duties, or liabilities of any party hereunder or as to any act, performance or non-performance of any act, deed or thing as agreed under this Agreement or matter or thing arising out of or relating to or under this Agreement (even though the Agreement may have been terminated), the same shall be referred to the Sole Arbitrator to be appointed by the EFL (Lender), according to the provisions of Arbitration and Conciliation Act, 1996, and rules there under and any amendment thereto from time to time. The Language of Arbitration shall be English. All cost of Arbitration including the Arbitrator's fees, Advocate Fees, travelling cost other miscellaneous expenses shall be borne equally by the parties hereto. The Award of the Arbitrator shall be a Speaking award and shall be final, conclusive and binding on all the parties whether on question of law or of fact. In the event of death, refusal, negligence, inability, incapability of the persons so appointed to act as the Sole Arbitrator, a new Arbitrator shall be appointed by the EFL (Lender). The venue of Arbitration shall be Pune or such other place that the Lender may in the Sole discretion determine and Courts in Pune or such other Place shall have exclusive jurisdiction. This Agreement shall be governed by and construed in all respects with Indian Laws and the parties hereto agree that any matter or issues arising hereunder or any disputes hereunder shall, at the discretion of the EFL (Lender), the subject to the exclusive jurisdiction of the Court of the city of Pune or such other place as the Lender may deem fit. This shall not however limit the rights of the EFL (Lender) to take proceedings in any other Court of competent jurisdiction."

Under such circumstances, the existence of an arbitration clause, invocation and the reservation of the rights of the lender to choose the jurisdiction is available. The respondents did not reply to the notice invoking

arbitration. It is also submitted that the learned Receiver took possession of a few of the hypothecated assets.

Moreover, the jurisdiction of the courts at Pune is a non-exclusive jurisdiction and not an exclusive jurisdiction under the clause. The lender was granted the liberty to choose the jurisdiction of a competent court.

It is submitted that the entire business transaction with regard to the respondents approaching the petitioner, sanction of the loan etc. were within the jurisdiction of this Court. Payments were also received within the jurisdiction of this court.

Under such circumstances, this application is disposed of by appointing Mr. Siddhartha Lahiri, learned Advocate, High Court at Calcutta, (Mobile No. 9830082839) as the learned Arbitrator, to arbitrate upon the disputes between the parties. The appointment is subject to the disclosure in terms of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator will fix his remuneration in terms of the schedule of the Act.

AP-COM/108/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

Sb/pa