

ORDER

OC-19

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/198/2025
SREI EQUIPMENT FINANCE LIMITED
VS
MARINA PILING COMPANY PVT. LTD. AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 9th June 2025.

Appearance:

Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Saubhik Chowdhury, Adv.
Ms. Tapasika Bose, Adv.
...for petitioner.

1. This is an application for appointment of an arbitrator under Section 11(6) read with Sections 14 and 15 of the Arbitration and Conciliation Act, 1996.
2. The petitioner submits that the erstwhile learned arbitrator, who was unilaterally appointed by the petitioner, has recused. The respondents were represented by their learned advocate who had raised an objection with regard to continuation of the proceedings. Upon consideration of the objections raised as to the constitution of the tribunal, the learned arbitrator recused. It appears that the matter did not progress at all.
3. As the respondents were not appearing before the Court, despite repeated directions, the Court had directed substituted service. The affidavit of

service is taken on record. It appears that paper publications have been effected in two new papers at Navi Mumbai.

4. The dispute arises out of a loan agreement. The petitioner claims to have provided financial assistance of Rs.2,84,74,400/- to the respondents and the loan-cum-hypothecation agreement was entered into on December 5, 2018. The respondent No. 1 is the borrower and the respondent No. 2 is the guarantor. The repayment schedule required payment of Rs.3,63,15,000/- including interest, in 45 instalments, commencing from February 15, 2019. Each monthly instalment would become payable on every 15th day of the succeeding calendar month.
5. It is submitted by Mr. Banerjee, that a part of the 7th instalment had been paid by the respondents. Thereafter, the respondents defaulted. Even after repeated reminders, the respondents failed and did not pay the monthly instalments. By a notice dated December 24, 2019, the agreement dated December 5, 2018 was duly terminated and a demand was raised for Rs.3,07,11,263.65/-. It is submitted that more than Rs. 3 crores is payable. The petitioner raised demand notice on December 24, 2019. It is submitted by the petitioner that the period excluded by the Hon'ble Apex Court between March 15, 2020 and February 28, 2022 (Covid Period) shall be applicable in computing the period of limitation with regard to the claim, in this case.

6. The petitioner had unilaterally appointed a learned advocate as the arbitrator. Thereafter, the petitioner went into CIRP. The petitioner has now come out of the CIRP and an asset reconstruction company namely NARCL is the successful resolution applicant.
7. Upon recusal of the learned arbitrator who was unilaterally appointed, this application has now been filed upon due service of a further notice under Section 21 of the Arbitration and Conciliation Act, 1996. The petitioner draws the attention of this Court to the order dated December 16, 2024, by an order of injunction on the secured asset was passed and the Court had granted liberty to the petitioner to proceed for appointment of a receiver. It is submitted that a receiver has since been appointed by this Court.
8. Under such circumstances, this application is allowed, taking into consideration the arbitration clause as also the jurisdiction clause. The agreement provides that the same is subject to the exclusive jurisdiction of the courts at Kolkata and all disputes arising out of the said agreement, including interpretation thereof, shall be decided by an arbitrator. Although, the clause provides for appointment of an arbitrator by the company, in view of the settled principle of law, such procedure of appointment is no longer permissible. Thus, the mechanism for appointment of an arbitrator in the present matter has no legal sanction in view of section 12(5) of the Arbitration and Conciliation Act, 1996..

9. Under such circumstances, the application is allowed. This Court appoints Mr. Justice Subrata Talukdar, former Judge of this Court as the learned arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitrator shall fix his remuneration as per the Schedule of the Act. All objections that are available to the respondents, shall be raised before the learned Arbitrator. The arbitrability of the dispute, admissibility of the claim, jurisdiction etc. are all left open, to be decided by the learned arbitrator.
10. The application is disposed of.

(SHAMPA SARKAR, J.)