

OC-28

AP-COM/199/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SREI EQUIPMENT FINANCE LIMITED
VS
M/S VISWATEJA CONSTRUCTIONS AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 7th April, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Subhankar Chakraborty, Adv.
Ms. Ruchira Manna, Adv.
. . .for the petitioner.

The Court: Affidavit of service is taken on record. Despite service, none appears on behalf of the respondents. This is an application for appointment of an arbitrator.

The loan facility was availed of by the respondent no.1 and the respondent nos. 2 to 5 were the guarantors.

The petitioner is a non-banking financial institution.

A loan agreement was entered into between the parties on May 15, 2018. The petitioner provided financial assistance to the tune of Rs. 5 crores. It is contended that the agreement was concluded within the jurisdiction of this court and the jurisdiction clause in the loan agreement also provides that Courts of Kolkata will have jurisdiction over matters arising out of the agreement. It is further submitted that the amount was to be repaid in 30 monthly instalments, after rescheduling of the loan. After payment of some of the instalments, the

respondents failed and neglected to make further payments and disputes arose. In spite of several requests and telephonic calls, the respondents failed to comply with the repayment schedule. A demand notice claiming more than Rs.23 crores on account of principal and interest was sent on November 26, 2024. The agreement was terminated. Subsequently, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on December 11, 2024 at the last known address of the respondents. The arbitration clause is contained in clause 9.11 of the loan agreement. Clause 9.10 of the agreement mentions the venue of arbitration as Kolkata and the Courts of Kolkata were to have exclusive jurisdiction. Accordingly, the petitioner has approached this Court for appointment of a learned Arbitrator, to adjudicate upon the disputes between the parties. The mechanism for appointment of the arbitrator as per the contract, is no longer permissible in law.

The existence of the arbitration clause is not in dispute. The fact that the claim is, prima facie, alive, is also not in dispute.

The other issues with regard to arbitrability, admissibility, limitation etc. are matters which are to be decided by the learned Arbitrator. By keeping the aforementioned issues and all objections that may be raised by the respondents open, and to be decided by the learned Arbitrator, this application is allowed.

Under such circumstances, the Court appoints Hon'ble Justice Pranab Kumar Chattopadhyay, Former Judge of this Court, as the learned 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 his own remuneration as per the Schedule of the Arbitration and Conciliation Act.

AP-COM/199/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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