

OC-29

AP-COM/200/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SREI EQUIPMENT FINANCE LIMITED
VS
DD EARTH MOVERS AND 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.

A loan facility was availed of by the respondent no.1, a partnership firm. The respondent No.6 executed a personal guarantee.

The petitioner is a non-banking financial institution.

A Master Facility Agreement was entered into between the parties on April 3, 2019. The petitioner provided financial assistance 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 the matter. It is submitted that the amount was to be repaid in 45 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. The demand notice claiming more than Rs.15 crores on account of principal and interest was sent on December 04, 2024. The agreement was terminated. Subsequently, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on December 24, 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 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, etc. are matters which are to be decided by the learned Arbitrator. Keeping the aforementioned issues open to be decided by the learned Arbitrator, this application is allowed.

Accordingly, the Court appoints Hon'ble Justice, Subrata Talukdar, former Judge of this court, as the Arbitrator, to arbitrate upon the disputes 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/200/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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