OCD-22

AP-COM/202/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISON

TATA CAPITAL LIMITED
VS
PRIME MOVERS AUTO AGENCY PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 19th March, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Mr. Ankush Majumdar, Adv.
. . .for the petitioner.

Ms. Aparajita Rao, Adv.
Ms. Nabanita Dutta, Adv.
Mr. Sanwal Tibrewal, Adv.
. . .for the respondents.

The Court:

1. AP-COM 202 of 2025, is an application for appointment of a learned Arbitrator in terms of Clause 13 of the Term Loan Agreement dated September 1, 2023.

2. According to Mr. Guha, the Term Loan Agreement is connected with the Registered Master Terms and Conditions for Term Loan dated December 31, 2018. The said agreement was entered into between Tata Capital Financial Services Limited ("TCFSL") and the respondents. Tata Capital Financial Services Limited and Tata Cleantech Capital Limited ("TCCL") merged and became Tata Capital Limited, on the approval of the scheme

of arrangement by the NCLT, Mumbai. According to the petitioner, all rights, liabilities, obligations, duties, benefits, interest, properties, assets, contracts agreements, securities etc. of Tata Capital Financial Services Limited had vested with the petitioner after the merger and the petitioner had the right to invoke the arbitration clause upon the respondents having failed to comply with the repayment schedule.

3. Learned advocate for the respondent denies the contention of the petitioner and submits that the petitioner is a non-signatory to the agreement. It is further contended that, by enforcing the arbitration clause, the petitioner was trying to indirectly enforce the deed of mortgage, which could only be done by way of a suit and not otherwise. Thus, the dispute should not be referred to arbitration. The petitioner should be relegated to a civil suit. It is submitted further that the corrective action plan under the guidelines of the Reserve Bank of India was not implemented. The petitioner could not straight away proceed against the respondents for adjudication of the alleged dues.

4. Mr. Guha submits that the objections raised by Ms. Rao, are with regards to arbitrability of the claims. The adjudication of such issues fall exclusively within the domain of the learned arbitrator and the referral court cannot assume jurisdiction to decide the same. All such issues are to be adjudicated upon consideration of the evidence to be adduced by the respective parties.

5. This Court finds that TCFSL and the respondent had agreed to refer any dispute arising out of the said term loan agreement, to be settled by an

Arbitrator. The notice invoking arbitration is available from the records. The records also show that the notice was served upon the respondents. The respondents replied to the notice. There is no denial of the existence of the arbitration clause, but the nominee of the petitioner, which was suggested in the notice, was not accepted. The order of the NCLT Mumbai, with regard to the merger and vesting of the properties, rights, liabilities, contracts, agreements, in the petition are also on record.

6. Under such circumstances, the disputes should be referred to a sole Arbitrator upon keeping all the issues raised by Ms. Rao, open for adjudication at the appropriate stage. Whether the petitioner being as non-signatory could have brought such claims against the respondent, shall also be decided by the learned Arbitrator.
7. Under such circumstances, the Court appoints Mr. Saptangsu Basu, learned Senior Advocate, as the sole Arbitrator, to arbitrate the dispute. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
8. The learned Arbitrator shall fix his own remuneration as per the provisions of the Arbitration and Conciliation Act.
9. AP-COM/202/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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