

ORDER

OC-17

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/234/2025
M/S SANY HEAVY INDUSTRY INDIA PVT LTD.
VS
AKSHAY MAHADEV BANGAR AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 7th May, 2025.

Appearance:

Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
...for the petitioner.

1. Paper publications have been effected in two widely circulated dailies, one in English and one in Hindi. Despite service, none appears on behalf of the respondents. Affidavit of service is taken on record.
2. The petitioner prays for appointment of a learned arbitrator in terms of clause 23 of the loan cum hypothecation agreement dated July 15, 2020. The petitioner is the assignee of the loan which was extended by Srei Equipment Finance Limited and the respondents.
3. The respondents had approached Srei Equipment Finance Limited for purchase of equipments. The assignment took place on August 18, 2021. The loan cum hypothecation agreement contains a clause, permitting such assignment. The same is provided under clause 18 of the said agreement. The respondents were aware of the same and had signed the agreement

without raising any objection as to the right of the lender to transfer or assign the loan.

4. Disputes arose when the repayment schedule was not adhered to by the respondents. The jurisdiction of courts at Kolkata had been agreed upon. This is provided in the schedule to the agreement. A notice was issued by the petitioner on August 29, 2024, demanding the unpaid dues to the tune of Rs.15,81,508/- as on May 31, 2024. The factum of assignment of the subject loan to the petitioner by Srei Equipment Finance Limited, was informed by the petitioner to the respondents by a demand notice. It appears that by a letter dated January 17, 2021, arbitration was invoked. All disputes which were raised by the petitioner, were enumerated in the said notice.
5. Although the petitioner is not a party to the agreement, the petitioner has stepped into the shoes of the original lender, upon assignment of the loan and is intrinsically connected with the business relationship between the parties to the agreement. The respondents were aware of the possibility of such transfer which has been provided in the loan agreement and had signed the document. The fact that the petitioner sought to be bound by the agreement, is available from the communications made.
6. Under such circumstances, this Court is of the, prima facie, view that the petitioner is entitled to invoke arbitration and seek directions for reference of the disputes to arbitration. However, whether the respondents can seek

enforcement of the contract or not, is an issue with regard to arbitrability and shall be decided by the learned arbitrator, if such objection is raised by the respondents.

7. Under such circumstances and considering the fact that there is a live dispute with regard to non-payment of the loan which was extended by the lender to the borrower, this application for appointment of an arbitrator is disposed of by appointing Mr. Pourush Bandyopadhyay, Advocate [Mobile No.8777593009], Bar Library Club, 2nd Floor, High Court at Calcutta, 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 Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)