

OC-111

AP-COM/239/2025  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL DIVISION

M/S. ELECTRONICA FINANCE LTD.  
VERSUS  
ANITA SANTOSH AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 1<sup>st</sup> May, 2025.

Appearance:

*Mr. Sayan Ganguly, Adv.*

*Ms. Sormi Dutta, Adv.*

*. . .for the petitioner.*

*Mr. Arijit Doss Mullick, Adv.*

*Mr. Suman Kumar Mukherjee, Adv.*

*Ms. Esha Majumder, Adv.*

*. . .for the respondents.*

The Court:

1. This is an application for appointment of a learned Arbitrator upon refusal of the erstwhile Arbitrator who was unilaterally appointed by the petitioner. The petitioner refers to the Clause 11.4 of the Loan Cum Hypothecation Agreement. The said clause provides for settlement of disputes by arbitration. Disputes and differences arising out of the rights, duties and liabilities of the parties or in respect of performance or non-performance of the terms and conditions of the said agreement shall be referred to a sole Arbitrator, to be appointed by the lender, according to the provisions of the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be in English. The venue of

Arbitration shall be either Pune or such other place that the lender may in the sole discretion determine and the Courts in Pune or such other place shall have exclusive jurisdiction.

2. The petitioner is a non-banking financial company and had extended a loan facility to the respondent no.1, which is a proprietorship concern. The respondent nos. 2 and 3 were the guarantors. Disputes arose when the respondents did not adhere to the repayment schedule. The petitioner moved the appropriate Civil Court for interim protection, by filing an application under Section 9 of the Arbitration and Conciliation Act. Orders were passed. A receiver was appointed and the Receiver had taken possession of the hypothecated asset.
3. The respondents moved an application challenging the order passed in the application under Section 9. Thereafter, the learned Arbitrator was appointed unilaterally by the petitioner and an application for further protection was filed under Section 17 of the Said Act before the learned Arbitrator. The petitioner also withdrew the application for injunction from the City Civil Court. In the application under Section 17 interim award was passed by the learned unilaterally appointed Arbitrator. The same was challenged by the respondents by filing an application under Section 34 of the said Act before the learned City Civil Court. The learned City Civil Court interfered with the interim award and passed necessary directions upon the learned Receiver to return the hypothecated asset to the respondents. The assets were returned. Such order was challenged by the petitioner in a Civil Revision. At this stage,

this Court finds that the erstwhile learned Arbitrator recused. The Receiver has handed over the asset to the respondents.

4. In view of the existence of the dispute between the parties and the existence of the Arbitration Clause, this Court is of the view that the dispute should be referred to a substitute Arbitrator. The petitioner invoked arbitration by issuing a notice under section 21 of the 1996 Act on 25<sup>th</sup> January, 2025. As per the Clause, the petitioner has exercised its option to choose Courts at Kolkata to have jurisdiction. The respondents do not have any objection to the choice of Jurisdiction of the Kolkata Court.
5. It is submitted by the petitioner that the Civil Revision shall be withdrawn because all interim reliefs can be prayed before the learned Arbitrator. Therefore, before the substituted Arbitrator initiates the proceedings, the petitioner shall take all steps to withdraw the revisional application. This Court does not make any observation with regard to the results of the earlier rounds of litigation, except that the parties will be at liberty to pray for all interim reliefs before the learned Arbitrator. All objections of the respondents will be decided by the learned Arbitrator.
6. The application being AP-COM 239 of 2025 is disposed of by appointing Mr. Pourush Bandyopadhyay, learned Advocate, (Mobile No. 8777593009) as the Arbitrator, to arbitrate the dispute. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

7. The learned Arbitrator shall fix his own remuneration as per the provisions of the Arbitration and Conciliation Act.

(SHAMPA SARKAR, J.)

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