

ORDER

OCD-17

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/255/2025
ELECTRONICA FINANCE LIMITED
VERSUS
M/S. G & L PROFILE AND EQUIPMENTS (P) LTD. & ORS.

BEFORE:
THE HON'BLE JUSTICE SHAMPA SARKAR
Date : 21st April 2025.

Appearance:

Mr. Sayan Ganguly, Advocate
Ms. Sormi Dutta, Advocate
... for the petitioner.

1. Notice of motion and Affidavit of service are taken on record. Despite service, none appears on behalf of the respondents.
2. This is an application for appointment of a learned arbitrator under Clause 13.5 of the business loan agreement dated 27th March, 2024.
3. The petitioner claims to have extended a loan facility to the respondents, for an amount of Rs. 1 crore and accordingly a business loan agreement was executed. The loan was to be repaid in 30 monthly instalments. As a security, six machines were hypothecated in favour of the petitioner by the respondents. Under the agreement, the petitioner had the right to repossess the machines in the event of any default committed by the respondents. Clause 13.5 is set out hereunder for convenience:-

"13.5 ARBITRATION AND JURISDICTION

All the disputes and differences arising between the parties hereto as to the interpretation of this Agreement or any covenants or conditions thereof or as to the rights, duties or liabilities of any party hereunder or as to any act, performance or non-performance of any act, deed or thing as agreed under this Agreement or matter or thing arising out of or relating to or under Agreement (even though the Agreement may have been terminated), the same shall be referred to the Sole Arbitrator to be appointed by the EFL (Lender), according to the provisions of Arbitration and Conciliation Act, 1996, and rules thereunder and any amendment thereto from time to time. The language of Arbitration shall be English. All cost of Arbitration including the Arbitrator's fees, Advocate fees, Travelling cost other miscellaneous expenses shall be borne equally by the parties hereto. The award of the Arbitrator shall be a Speaking award and shall be final, conclusive and binding on all the parties whether on question of law or of fact. In the event of death, refusal, negligence, inability, incapability of the persons so appointed to act as the Sole Arbitrator, a new Arbitrator shall be appointed by the EFL (Lender). The venue of Arbitration shall be Pune or such other place that the Lender may in the Sole discretion determine and Courts in Pune or such other place shall have exclusive jurisdiction. This Agreement shall be governed by and construed in all respect with Indian Laws and the parties hereto agree that any matter or issues arising hereunder or any disputes hereunder shall, at the option/discretion of the EFL (Lender), be subject to the non-exclusive jurisdiction of the Courts of the city of Pune. This shall not however limit the rights of the EFL (Lender) to take proceedings in any other Court of competent jurisdictions.

4. The clause provides that all disputes and differences arising out of the said agreement with regard to its performance, non-performance,

termination etc. shall be referred to a sole arbitrator who shall be appointed by the petitioner. The venue of arbitration shall be Pune or any other place that the lender may in its sole discretion determine. All disputes were made subject to the non-exclusive jurisdiction of the Courts at Pune, but the clause did not defeat the right of the lender to take out proceedings in any other Court of competent jurisdiction.

5. It is contended by the petitioner that the respondents paid around three instalments and thereafter failed to repay the amount as per the repayment schedule. On January 10, 2025, a loan recall notice was issued by the petitioner through its advocates, calling upon the respondents to either handover the hypothecated machines or repay the loan. The said notice was received by the respondents, but they continued to keep the machines in possession and failed to repay the amount. The petitioner approached the learned City Civil Court at Calcutta for appointment of a Receiver and an order was passed on January 28, 2025, by the learned 12th Judge. A learned Advocate was approached as the Receiver, to take possession of the hypothecated machines. The learned Receiver, thereafter, filed a report before the competent court indicating that the Receiver had taken possession of the subject machines with the help of the police. The machines have been kept at Vadodara, Gujarat.
6. The petitioner has now approached this Court for reference of the dispute to arbitration. The notice invoking arbitration is available. The petitioner

has specifically averred that part cause of action has taken place within the jurisdiction of this Court i.e., at the branch office of the petitioner at 16, Stand Road, Kolkata-700001, inasmuch as, all communications with regard to the loan facility, issuance of the recall notice and execution of the agreement were completed in the said office. The clause also permitted the petitioner to take out proceedings in a court of competent jurisdiction. Hence, by the notice invoking arbitration dated February, 2025, the petitioner informed the respondents that the venue and seat of arbitration shall be Kolkata. The name of a sole arbitrator, a learned advocate, was also proposed and the notice was delivered to the respondents. The learned advocate for the respondents replied to the notice invoking arbitration, by a letter dated February 6, 2025, rejecting the proposal for appointment of the learned arbitrator as suggested by the petitioner and asked the petitioner to file an appropriate application before the Court on the ground that unilateral appointment of an arbitrator was barred under the law. The relevant portion of the letter is quoted below :-

“Please note that this letter is without prejudice to and/ or without impairing or affecting our client’s right and shall not be construed as waiver of any rights, powers or remedies which our client has now or in future under applicable law or in respect of any legal action that may be filed or taken by or client against your client including but not limited to raising a counter claim under the Contract, if any.

In the meanwhile, you are requested not to take any steps in relation to the appointment of sole Arbitrator. You can file appropriate application before the Ld. Court for appointment of an independent sole arbitrator.”

7. None appears for the respondents despite service and the matter proceeds.
8. The petitioner has approached this Court on the ground that the mechanism as provided under clause 13.5 of the business loan agreement has failed and unilateral appointment is no longer permissible in law.
9. The objections with regard to admissibility of the claim, arbitrability of the issues, limitation etc. may be raised by the respondents before the learned Arbitrator.
10. The application is disposed of by appointing Hon'ble Justice Subrata Talukdar, former Judge of the Court, 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/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)