

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/256/2025
M/S ELECTRONICA FINANCE LIMITED
VS
M/S G AND L PROFILE AND EQUIPMENTS (P) LIMITED AND ORS

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

*Mr. Sayan Ganguly, Adv.
Ms. Sormi Dutta, Adv. ... for the petitioner.*

1. Affidavit of service is 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 11.4 of the term loan cum hypothecation agreement dated 24th March, 2023.
3. The petitioner claims to have extended a loan facility to the respondent for an amount of Rs. 1,02,54,200/- . Accordingly the agreement was executed. The loan was to be repaid in 36 monthly instalments. As a security, two 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 11.4 is set out hereunder for convenience:-

“11.4 ARBITRATION AND JURISDICTION

Any disputes or differences arising between the parties hereto as to the interpretation of this Agreement or in connection with 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 this Agreement [even though the Agreement may have been terminated], the same shall be referred to a sole Arbitrator to be appointed by the Lender, according to the provisions of Arbitration and Conciliation Act, 1996, and rules there under 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 a sole arbitrator, a new arbitrator shall be appointed by the 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 respects with Indian laws and the parties hereto agree that any matter or issues arising hereunder or any disputes hereunder shall, at the discretion of the Lender be subject to the exclusive jurisdiction of the Courts of the city of Pune or such other place as the Lender may deem fit. This shall not however limit the rights of the 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.

5. All disputes were made subject to the exclusive jurisdiction of the Courts of Pune, but such clause would not defeat the right of the lender to take out proceedings in any other Court of competent jurisdiction.
6. It is contended by the petitioner that the respondents paid upto the fourteenth instalments and thereafter failed to repay the amount as per the repayment schedule. On February 1, 2025, a loan recall notice was issued by the petitioner through its advocates, calling upon the respondents to hand over the hypothecated machineries. The said notice was received. Payments were not made. The petitioner approached the learned City Civil Court at Calcutta for appointment of a receiver. An order was passed by the learned 12th Judge, appointing a receiver, in order to take possession of the machines which were hypothecated. The learned receiver filed a report before the competent court, indicating that possession of the subject machines could not be taken.
7. The petitioner has now approached this Court for reference of the dispute to arbitration. The notice invoking arbitration is available on record. The petitioner has specifically averred that part cause of action had 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, loan recall notice etc. were issued from the said office and the execution of the agreement was concluded in the said office as well. The jurisdiction clause permitted the petitioner to take out proceedings in a competent court having jurisdiction. By the notice invoking arbitration dated February 1, 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 on

the respondents. The learned advocate for the respondents replied to the notice invoking arbitration, by a letter dated February 6, 2025 and rejected the proposed name of the learned arbitrator. The petitioner was advised to approach the court for appointment of a learned Arbitrator on the ground that unilateral appointment of an arbitrator was barred under the law.

8. The relevant portion is quoted below :-

“That in the terms of the order dated 28.01.2025, I have been appointed as receiver to take possession of the machines. In terms of order on 29.01.2025 I have executed a special Power of Attorney and appointed one Nitesh Jha son of Batohi Jha residing at 45, Jatin Das Road, Kolkata-700029 being the men and agent of the petitioner, to comply the order dated 28.01.2025.

That in terms of order as mention herein above the said agent went to took possession of the subject machines with the help on police on 31.01.2025 being no. 1. Wood Grain Furnace with Standard Accessories, Manufactured by R.K. Electricals and 2. Aluminium Anudizing Plant and Machine with Standard Accessories Manufactured by Ship Machine Tools but the said agent could not take the physical possession of the said machines due to the set-up of the factory.”

9. None appears for the respondents, despite service.
10. The petitioner has approached this Court for reference to arbitration on the ground that the mechanism as provided under clause 11.4 of the term loan cum hypothecation agreement has failed and unilateral appointment is no longer permissible in law.
11. The existence of the arbitration clause is not in dispute. The objections with regard to admissibility of the claim, arbitrability of the issues, limitation etc. that the respondents may raise shall be decided by the learned arbitrator.
12. The application is disposed of by appointing Hon’ble Justice Subrata Talukdar, former Judge of the Court as the learned Arbitrator to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation

Act, 1996 by the learned Arbitrator. The learned Arbitrator shall fix his/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)