

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/259/2025
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. The notice of Motion and the 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 11.4 of the term loan cum hypothecation agreement dated 17th March, 2023.
3. The petitioner claims to have extended a loan facility to the respondents for an amount of Rs. 1,59,83,088/- and accordingly the business loan agreement was executed. The loan was to be repaid in 36 monthly instalments. As a security, 11 machines were hypothecated in favour of the petitioner by the respondents. Under the agreement, the petitioner had the right to repossess the machineries 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. 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.

5. It is contended by the petitioner that the respondents paid upto the thirteenth instalment 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 hand over the hypothecated machines or to make payment. The notice was received by the respondents but no payment was 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 on January 28, 2025, appointing a learned Advocate as the Receiver, in order to take possession of the hypothecated machines. The learned Receiver filed a report before the competent court indicating that possession of 6 of the 11 machines could be taken with the help of the police. Five machines could not be located. The machines were kept at Vadodara, Gujarat. The petitioner unilaterally approached one Mr. Singh to act as the arbitrator, but recalled such request.
6. 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 all communications with regard to the loan facility, issuance of the loan recall-cum-termination notice etc. were done from the said office. The jurisdiction clause also permitted the petitioner to take out proceedings in a court of competent jurisdiction. By a notice invoking arbitration dated February 1, 2025, the petitioner informed the respondents that

the venue and seat of arbitration would be Kolkata. The name of a sole arbitrator, a learned advocate, was also proposed and the notice was delivered to the respondents. The learned advocates for the respondents replied to the notice invoking arbitration, by a letter dated February 6, 2025, rejecting the name of learned arbitrator as proposed by the petitioner on the ground that unilateral appointment of an arbitrator was barred under the law. The petitioner was asked to approach the court for appointment of an independent learned arbitrator. The contents 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 not or in future under applicable law or in respect of any legal action that may be filed or taken by our 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. Despite service, none appears on behalf of the respondents. The petitioner has approached this Court 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.
8. The objections with regard to admissibility of the claim, arbitrability of the issues, limitation etc. which the respondents may raise, shall be decided by the learned arbitrator.
9. The application is disposed of by appointing Hon’ble Justice Subrata Talukdar, former Judge of this 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. The learned Arbitrator shall fix his/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)