

OCD 8

ORDER SHEET
AP-COM/314/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SREI EQUIPMENT FINANCE LIMITED
VS
TRINITY ALTERNATIVE INVESTMENT MANAGERS LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 24th April, 2025.

Appearance:
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Debnath Ghosh, Sr. Adv.
Ms. Pubali Sinha Chowdhury, Adv.
Ms. Rajeshwari Prasad, Adv.
...for the petitioner

Ms. Hashnuhana Chakraborty, Adv.
Mrs. Rituparna Saha, Adv.
...for the respondent

The Court:

1. This is an application for appointment of a learned Arbitrator.
2. Ms. Chakraborty submits that an affidavit may be necessary to bring on record the objections in respect of the claims of the petitioner. The objections are that the petitioner had actually invested in its own company and did not sanction any loan in favour of the respondent. The respondent is the subsidiary company of the petitioner. The question of grant of loan did not arise. Only after 49% of the shares were sold to Payash, unjustified demands were being made by the petitioner and the respondent was being

coerced into paying back the amount. 51% of the share in the respondent company still remains with the petitioner. The sole intention of the petitioner company is to take over control from Payash. The respondent tried to raise money by issuing equities, in order to pay back the amount invested by the petitioner in the respondent company. The petitioner strongly objected to the same. The financial situation of Trinity suffered. As a result of which, the respondent could not pay back the amount. Proceedings under the SARFAESI Act were also initiated.

3. In my opinion, these facts are not relevant at the stage of reference Arbitrability of the issues, admissibility of the claims, other objections which the respondent has sought to raise, are to be decided by the learned Arbitrator. Thus an affidavit-in-opposition is not necessary at this stage.
4. The referral court is only required to ascertain whether there is a subsisting arbitration agreement between the parties or not.
5. Ms. Chakraborty submits that the arbitration clause is contained in the agreement dated 28th August, 2020 and not in the supplementary loan agreement dated 2nd November, 2020.
6. Mr. Bachawat, learned senior advocate, submits that the objections of Ms. Chakraborty are on the merits and should be left for the learned arbitrator to decide. The claims of the petitioner arise out of both the agreements. The arbitration clause has been incorporated in the second supplementary loan agreement by reference.
7. Admittedly, there are disputes. The notice invoking arbitration was issued by the respondent. The petitioner was requested to appoint a sole emergent

Arbitrator. The petitioner replied to the said notice and proposed the name of a learned senior advocate, upon recording that, the prevailing law in India did not provide for a sole emergent Arbitrator. Upon receipt of such letter from the petitioner, the respondent did not take any steps. Hence, this application has been filed before this Court for reference to arbitration. Clause 8.4.1. of the agreement dated 28th August, 2020 contains the arbitration clause, which is quoted below:

“8.4.1 Arbitration

In the event of any claim, dispute or difference arising out of or in connection with this Agreement including but not limited to the existence, validity, performance, interpretation or, implementation or termination of this Agreement or as the consequence of its nullity, or out of or in connection with any breach, or alleged breach of this Agreement including an Event of Default (hereinafter referred to as the “Dispute”) between the parties hereto, then the parties hereby agree to refer such Dispute to arbitration under the provisions of the Arbitration Agreement.”

8. Admittedly, there are disputes. The courts at Kolkata have exclusive jurisdiction.
9. Under such circumstances, as a referral court, I am satisfied that the dispute between the parties must be referred to a sole Arbitrator. All issues which have been raised by Ms. Chakraborty before this court and such other objections that are available, can be raised before the learned Arbitrator.

10. Under such circumstances, the Court appoints Hon'ble Justice Sanjib Banerjee, former Chief Justice of Madras and Meghalaya High 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 own remuneration as per the Schedule of the Act.
11. AP-COM/314/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)