ORDER OCD-9

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/332/2025

L & T FINANCE LTD.
VERSUS
VIGLES SECURITY PRIVATE LIMITED& ORS.

BEFORE :
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 21st May, 2025.

Appearance:
Mr. Ritoban Sarkar, Adv.
Ms. Shrayashee Das, Adv.
Mr. Rohan Kumar Thakur, Adv.
Mr. TridibeshDasgupta, Adv.
for the petitioner.

Mr. Tanish Ganeriwala, Adv.
Ms. Shreya Goenka, Adv.
Ms. Jiya Bose, Adv.
Mr. Sagnik Mukherjee, Adv.
. . . for the respondents.

The Court :This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection, to ensure that the sum payable by the respondents to the petitioner is not siphoned off. A non-banking institution wants to ensure that the money is notremoved from the bank accounts.

The parties entered into an agreement on February 24, 2024. The same was a SME Business Loan Agreement. The agreement contains an arbitration clause. The respondents were granted credit facility of Rs.20,24,387/- which was repayable in 36 monthly instalments. The same carried an interest rate of 19% per annum. The petitioner submits that the repayment schedule was not adhered to and alleges that only a few instalments were paid. By a notice dated October 1, 2024, the petitioner terminated the agreement and recalled the credit facility. A demand of Rs.20,47,178.30was made. The respondents neglected to pay the money.

According to the petitioner, a claim of Rs.21,76,568.55 was due and payable upto December, 2024.

Mr. Ganeriwala, learned Advocate for the respondents, submits that the loan was an unsecured one. The interest component of 19% per annum is not permissible and was unilaterally imposed. Such action was contrary to the understanding between the parties. Had the financial institution indicated that such high rate of interest would be levied, the respondents would not have availed of such facility. Mr. Ganeriwala disputes the calculation made by the petitioner. He relies on a decision of the Hon'ble Supreme Court in the case of **Raman Tech. & Process Engg. Co. Vs. Solanki Traders** reported in **(2008) 2 SCC 302,** in support of his contention that, the prayers in the application are in the nature of attachment before judgment and the respondents cannot be called upon to furnish such security, against an unsecured loan.Until the claim of the petitioner is quantified by a proper legal process, such orders cannot be passed.

The petitioner had unilaterally appointed an Arbitrator. The learned Arbitrator has recused. An interim award was passed in favour of the petitioner which has lost its effect.

Considered the rival contentions of the parties.

The financial institution deals with public money. For ease of business, the financial institutions permit credit facilities, which are at times unsecured. Small time business men or people in sudden need of money, avail of such credit facility. The financial institutions cannot survive as viable enterprises, if the principal and interest are not repaid as per the schedule. This has a direct bearing on the country's financial health. Thus, it will not be out of context to observe that non-adherence to the repayment schedule, is a breach. The agreement is a commercial document, which has to be taken seriously in order to ensure commercial efficacy. Stringent provisions of Order XXXVIII Rule 5 of the Code of Civil Procedure are not applicable in such situations. The equities have to be balanced. Advancement of credit facility and non-payment thereof, are admitted facts. The dispute is with regard to the quantum of interest and the calculation of the dues. The fact that the principal amount was released in favour of the respondents, is not in dispute. The fact that the respondents were required to pay the money, is also not in dispute. Thus, the financial company requires some kind of protection at this stage. The respondent cannot enjoy the money, appropriate the same and not repay.

Under such circumstances, as Mr. Ganeriwala disputes the quantum of interest, this Court ignores the calculation of the interest, but only deems it proper to secure the portion of the principal which is unpaid. The prayer for attachment of the entire bank account is refused.

However, the respondents shall be entitled to operate their bank account, the details of which are mentioned hereinbelow :-

ACCOUNT NO. 920020004683208
BANK NAME – AXIS BANK LIMITED
BRANCH – Ground Floor And Basement Sco No 201, Sector 9, Gurgaon, Haryana – 122001
IFSC CODE – UTIB0003208

upon maintaining a continuous balance of Rs.16 lakhs in the said account. This order will continue for a period of 90 days within which time the petitioner will take steps for appointment of a learned Arbitrator.

The concerned bank authorities shall act on the basis of a server copy of this order, to be supplied by the petitioner or the Advocate-on-Record of the petitioner.

The application being AP-COM 332 of 2025, stands disposed of.

(SHAMPA SARKAR, J.)

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