

ORDER SHEET
AP-COM/573/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SREI EQUIPMENT FINANCE LIMITED
VS
BGE MINING PVT. LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 16th April, 2025.

Appearance:
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
...for the petitioner

Mr. Snehashis Sen, Adv.
...for the respondent no.2

The Court:

1. Despite service on many occasions, none appears on behalf of the respondent no.1. The respondent No.1 is the company. The respondent No.2 is the director. In view of the pendency of a suit between the petitioner and the respondent No.2, the petitioner submitted that at this stage, it would not want to proceed against the respondent No.2 in the arbitral proceeding.
2. Accordingly, the name of the respondent no.2 has been expunged from the array of respondents.

3. This is an application for appointment of a learned Arbitrator to arbitrate upon the disputes between the parties. The petitioner relies upon Clause 23 of the Loan-cum-Hypothecation Agreement. According to the said clause, any dispute and/or difference arising out of, concerning or touching upon the agreement at any time during its subsistence or thereafter, including disputes and/or differences relating to the interpretation of the agreement or any clause thereof, shall be referred to arbitration of a sole arbitrator to be appointed by the company. The provisions of the Arbitration and Conciliation Act, 1996 have been made applicable. It is provided that the seat of arbitration shall be same as the Court or forum mentioned in the Loan-cum-Hypothecation Schedule. In the present case, the hypothecation schedule mentions that courts at Kolkata will have jurisdiction over the disputes arising out of the said agreement.
4. The petitioner is a company carrying on business, inter alia, of providing financial assistance to parties who are interested to acquire construction, equipment, vehicle and other machineries. The respondents entered into the Loan-cum-Hypothecation Agreement on June 30, 2019 with the petitioner.
5. The petitioner allegedly extended a loan of more than Rs.3 crores to the respondents. It is alleged that the respondent failed and neglected to pay the loan as per the repayment schedule. The loan was recalled and the agreement was terminated. The petitioner also moved an

application for interim measures before the High Court, but the same was disposed of, granting liberty to the petitioner to invoke arbitration.

6. The petitioner issued a notice dated March 23, 2023 under Section 21 of the Arbitration and Conciliation Act, 1996. The respondent no.1, borrower, replied to the said notice and disputed the claim of the petitioner. The respondent No.1 did not agree to the name of the learned Arbitrator, as suggested by the petitioner. Thus, the petitioner has approached this Court for appointment of a learned Arbitrator.
7. The arbitration clause is not in dispute. The jurisdiction of this Court is also not in dispute. The fact that there is a live dispute between the parties with regard to non-payment of dues, is available from the records. The petitioner has raised a claim on account of unpaid instalments, which the respondent No.1 has denied. Moreover, unilateral appointment of an arbitrator by the petitioner is no more permissible in law and accordingly, the respondent No.1 objected to the name of the arbitrator suggested by the petitioner.
8. Under such circumstances, the Court appoints Hon'ble Justice Subhro Kamal Mukherjee, former Chief Justice of the High Court of Karnataka, 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.

9. All objections which are available to the respondent with regard to admissibility, arbitrability, limitation etc. are kept open to be decided by the learned Arbitrator, if raised.
10. AP-COM/573/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)