ORDER OCD-6

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/445/2025
M/S. NIHAL PRASAD INDUSTRIES LLP
VS
KOTAK MAHINDRA BANK LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 23rd June 2025.

Appearance:-

Mr. Amitava Mukherjee, Sr. Advocate
Ms. Arpita Saha, Advocate
Ms. Antara Das, Advocate
... for the petitioner.

Mr. Abishek Guha, Advocate
Mr. A. Majumdar, Advocate
Mr. Adipta Kr. Pandit, advocate
... for the respondents.

1. This is an application for appointment of a learned arbitrator. The petitioner relies on Clause 11.17 of the Loan cum Guarantee Agreement dated May 5, 2023, which is as under:-

"11.17 Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The arbitration shall be held, either in Delhi, Chennai, Kolkata, Ahmedabad, Indore, Bangaluru or Hyderabad at the sole and absolute discretion of the Bank."

2. The petitioner contends that vehicle bearing No. WB73G-7223 was forcefully repossessed by the respondent on March 29, 2024 at Saktigarh.

3. An application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed before this Court. A coordinate Bench directed the petitioner to furnish a bank guarantee for a sum of Rs.36,55,917.92 in favour of the respondent bank, for release of the vehicle.

4. The order was challenged in appeal. The Hon'ble Division Bench directed release of the vehicle in favour of the petitioner with the further direction upon the petitioner to pay the parking charges from July 19, 2024 till the date of delivery of possession. The petitioner alleges that the vehicle was released on December 11, 2024 by the bank, but in a damaged condition.

5. The petitioner raised a dispute with regard to such action of the respondent. Accordingly, the arbitration clause was invoked in respect of the Agreement No. CV4968294. The petitioner's case is that the period during which the vehicle was in the possession of the bank, such damage was sustained. It is further contended that during the entire period, monthly instalments were being paid. As the vehicle was lying in an idle condition, the national permit, the road tax and insurance also expired. The petitioner suffered loss. The loss suffered by the petitioner was calculated at Rs.27,03,032/- on account of idle labour, as driver was being paid his salary, depreciation, compensation for the damage sustained by the vehicle etc. The petitioner claimed a sum of Rs.27,03,032/- along with interest @12% p.a. from the respondent.

Accordingly, arbitration clause was invoked by a notice dated March 25, 2024, calling upon the respondent to pay the aforementioned amount, in the event of failure, the respondent was called upon to refer the dispute to arbitration. The petitioner also reserved its right to take steps in the matter of recovery of the amount.

6. Mr. Guha, learned advocate for the respondent submits that the invocation was not proper. The petitioner did not nominate an arbitrator. The next submission of Mr. Guha is that, the agreement mentioned in the letter of invocation was also accompanied by a separate agreement, which contained an arbitration clause. One agreement was in respect of the body of the vehicle and the other in respect of the chassis. Thus, the invocation ought to have been mentioned both the agreements as the agreements were interconnected.

7. It appears that the petitioner is aggrieved by the alleged wrongful repossession of the vehicle by the bank, from the petitioner's custody. In the repossession/inventory list, the Agreement No.CV4968294 has been mentioned. This Court is of the view that the bank acted as per the terms and conditions of the said agreement no. CV4968294, and not the other agreement which, Mr. Guha said, was a part of the same transaction. The petitioner is exclusively affected by the repossession. Under such circumstances, this Court cannot hold that invocation is bad in law. Secondly, this Court also finds that the arbitration clause does not require the petitioner to nominate an arbitrator. The clause specifically states that

disputes shall be referred by the bank, to a sole arbitrator to be nominated by the bank. The other contention of Mr. Guha that the petitioner has a remedy under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, is also not accepted, inasmuch as, the said Act allows the bank to recover dues. The petitioner's claim for compensation, damages etc. cannot be adjudicated by the forum constituted under the said Act. The petitioner is bound by the arbitration clause and so is the respondent.

8. Under such circumstances, the contentions of Mr. Guha are not accepted. However, the issue of arbitrability, admissibility etc. are matters to be decided by the learned arbitrator. The findings hereinabove are to the extent of the referral court satisfying itself as to the existence of an arbitration agreement and reference of the dispute to arbitration. All questions are left open, to be raised before and decided by the learned arbitrator.

9. Under such circumstances, this Court allows the application and refers the dispute to a sole arbitrator.This Court appoints Mr. Arindam Mandal, Advocate (Mobile: 8420004468) 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 remuneration as per the Schedule of the Act.

10. No affidavits have been called for. This Court has not gone into the merits of the claims of the petitioner.

11. The application is disposed of.

(SHAMPA SARKAR, J.)

dg/S.Kumar