

ORDER

OCD-8

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/447/2025
BASANT OIL CARRIERS
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 July 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. NL01AG0816 was forcefully repossessed by the respondent on July 7, 2024 at Jalpaiguri.
3. An application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed before this Court. This Court directed the respondent to release the vehicle in favour of the petitioner, upon payment of a sum of Rs.80,000/- by the petitioner, being the overdue amount at that stage.
4. The petitioner alleges that the vehicle was released on February 27, 2025 by the bank, but in a damaged condition. The petitioner raised a dispute. Accordingly, the arbitration clause was invoked in respect of the Agreement No. CV4656779. The petitioner's case is that the period during which the vehicle had sustained severe damage when the same was in the custody of the respondent. It is further contended that during the entire period, 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 petitioner claimed a sum of Rs.22,67,857.83 along with interest @12% p.a., from the respondent. Accordingly, the arbitration clause was invoked by a notice dated March 13, 2024, calling upon the respondent to pay the aforementioned amount, in failure of which, the respondent was called upon to refer the dispute to arbitration. Moreover, the claim should be raised in a proceeding under Recovery of Debts due to Banks and Financial Instruments Act, 1993.
5. Mr. Guha, learned advocate for the respondent submits that the invocation was not proper. The petitioner did not nominate an arbitrator.

6. 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.CV4656779 has been mentioned. This Court is of the view that the cause of action arose when the bank had repossessed the vehicle upon involving the terms of the agreement bearing No. CV4656779. The petitioner is aggrieved by the repossession of the vehicle. The agreement contains an arbitration clause. The arbitration clause does not require the petitioner to nominate an arbitrator. The clause specifically states that disputes shall be referred to the Single arbitrator by the bank. The other contention of Mr. Guha that the petitioner had a remedy under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, is also not accepted, inasmuch as, the said statute enables the bank to file a proceeding for recovery of money. 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.
7. Under such circumstances, the contentions of Mr. Guha are not accepted. However, the issues of arbitrability, of the dispute, admissibility of the claims 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.

8. 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.
9. This Court has not gone into the merits of the claims of the petitioner.
10. The application is disposed of.

(SHAMPA SARKAR, J.)

dg/S.Kumar