

ORDER SHEET
AP-COM/449/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED
VS
M/S. CONTEMPORARY NEWS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th August, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Harshita Nath, Adv.
...for the petitioner

Mr. Rishav Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Sudarshan Dutta, Adv.
Mr. Dwaipayan Ghosh, Adv.
...for the respondent

The Court:

1. This is an application for appointment of an arbitrator. The dispute arises from the Agreement for Right to Usage dated January 24, 2018. Article XXVII, is the arbitration clause, which is quoted below for convenience:

“Article XXVII – Dispute resolution

a) This Agreement shall be governed by the Laws of India and Courts at New Delhi alone shall have jurisdiction to entertain and try all actions, suits and proceedings arising out of these presents.

b) In the event of any claim, dispute or difference arising out of or in connection with the interpretation or implementation of this Agreement, or out of or in connection with any breach, or alleged breach of this Agreement (hereinafter referred to as the “Dispute”) between the Parties hereto, then the Parties hereby agree to refer such Dispute to arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act of 1996 or any statutory modification or re-enactment thereof for the time being in force (hereinafter referred to as the “Arbitration Act”). The arbitration shall be held at Kolkata in the following manner:

- (i) All proceedings in any such arbitration shall be conducted in English.*
- (ii) The Parties agree that in the event of any Dispute that remains unresolved, either Party may, by written notice served upon the other, require the matter to be referred for resolution to independent*

arbitrators. In such a case, both the parties would jointly select one common arbitrator. If the parties fail to appoint the common arbitrator within 30 (Thirty) days of the notice for arbitration, both the parties should appoint one arbitrator each and the two arbitrators so appointed would appoint a third arbitrator, who shall be the presiding officer of the Arbitral Tribunal. The Parties shall co-operate to facilitate the Arbitral Tribunal delivering their decision within 30 (Thirty) business days of commencement of the arbitration process.

- (iii) The cost of arbitration proceedings shall be borne by both the Parties equally.*
- (iv) The arbitration award made by the sole arbitrator shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly.*
- (v) The provisions of this Section shall survive the termination / expiry of the Agreement.”*

2. Mr. Swatarup Banerjee submits that, by a Business Transfer Agreement, all rights, title and interest arising from the said agreement had been transferred by Srei Infrastructure Finance Limited (SIFL) to the petitioner (SREI).

3. SIFL had paid a security deposit for use of the land of the respondent situated at Tangra, Kolkata – 700 015 of Rs.8 crores. The same was an interest free refundable security deposit. The agreement was determined sometime in March, 2020, by the petitioner. It is submitted that, only a part of the security deposit had been refunded by the respondent. The balance amount of Rs.6,25,00,000/- remained unpaid. By letters dated July 15, 2020 and December 20, 2020, the petitioner requested refund of the balance. By a letter dated January 2, 2021, the respondent requested the petitioner for additional time upto July/August, 2021, to repay the balance security deposit of Rs.6.25 crores against cancellation of the usage agreement. The reason assigned was that the business of the respondent had slowed down due to the global pandemic. By another letter dated February 24, 2021, a reminder was sent to the respondent for the refund. Similar request was made in June, 2022 as well. Thereafter, the arbitration clause was invoked accordingly by the petitioner. Thus, the application has been filed before this Court for appointment of an arbitrator and settlement of the dispute with regard to non-refund of the balance security deposit.
4. Mr. Rishav Banerjee, learned advocate for the respondent submits that there was no subsisting agreement between the petitioner and the respondent. The respondent was not a privy to the Business Transfer Agreement. The rights and liabilities arising out of the Agreement for Right to Usage dated January 24, 2018, had not been transferred to

the petitioner. The Business Transfer Agreement did not provide so. The respondent was in the dark about the Business Transfer Agreement. Moreover, the partial refund of the security deposit was made to SIFL and if the bank statements were produced, it would be evident that the petitioner had not received the refund.

5. The next contention of Mr. Rishav Banerjee is that, the claim is barred by limitation, inasmuch as, the agreement was terminated sometime in March, 2020 and refund of part of the security deposit was made in April 24, 2020. Even if the date of the letter by which the respondent had approached the petitioner for extension of time to repay the amount is taken as the date of accrual of cause of action, the period of three years expired sometime in January, 2025. If the advantage of the order of the Hon'ble Apex Court with regard to exclusion of time in initiating proceedings under the Arbitration and Conciliation Act, 1996, during the covid pandemic is made applicable, the period of limitation expired in March, 2025. The last contention of Mr. Banerjee is that, the agreement has a forum selection clause and parties agreed that Courts at New Delhi will have jurisdiction to entertain and try all action, suits and proceedings arising out of the said agreement. The subsequent clause which provides that the arbitration shall be held at Kolkata will be subservient to the forum selection clause, as the forum selection clause is the preceding clause. It is also submitted that the decision of a Co-ordinate Bench in the matter of *Commercial Division Bowlopedia Restaurants India Limited vs. Devyani International Limited*

reported at *2021 SCC Online Cal 103 : (2021) 1 Cal LT 138*, shall be applicable in the case as the agreement provides the seat as also a forum and there is a conflict.

6. Considered the rival contentions of the parties. First and foremost, the letter dated January 2, 2021, fairly indicates that the petitioner had been approached by the respondent seeking extension of time upto July/August, 2021, to enable it to refund the security deposit. The reason assigned for not being able to refund the money at the relevant time was the closure of business due to the covid pandemic. The letter itself indicates that the respondent had acknowledged the right of the petitioner to claim the refund.
7. Mr. Rishav Banerjee's contention that the rights and liabilities of SIFL arising from the Agreement for Usage had not been transferred to the petitioner is not, prima facie, available from the records. The issues are triable. It appears from the records that, by a letter dated March 29, 2020, the petitioner had requested the respondent to cancel the Usage agreement. In the same document, the acknowledgement of the respondent is available which reads as follows:-

"We accept and confirm all the terms as stated above and agree for unconditional cancellation of the Agreement with no claim and/or demand on Srei Equipment Finance Limited. We will also Refund the Security Deposit amount of Rs.6,25,00,000/-(Rupees Six Crores Twenty Five Lacs) without any deductions."

8. The respondent agreed to the unconditional cancellation by the petitioner, by specifically recording that it had no demand against the petitioner and the amount of Rs.6.25 crores would be refunded without any deduction. This document also, prima facie, shows that the parties had acknowledged each others' rights and liabilities arising out of the usage agreement.
9. With regard to the point of limitation, it appears to this Court that in January, 2021, the respondent had requested extension of time upto July/August, 2021, for repayment of the loan. In the meantime, the petitioner was in CIRP. Moreover, it appears that in June, 2022, the petitioner again requested for refund of the money. Whether the parties had agreed to wait for a while or till the petitioner was out of CIRP to continue with the negotiation for refund of the security deposit or whether the petitioner had extended the time by conduct or by oral assurance thereby acceding to the request of the respondent for extra time to refund the money, are matters of evidence. The last demand was made in June, 2022 and the invocation of the arbitration clause was in April 17, 2025.
10. Under such circumstances, this Court is unable to hold that the claim is deadwood. The referral court can weed out absolutely dead and frivolous claims, but in this case, limitation is a mixed question of fact and law. With regard to the conflict between the overall jurisdiction clause and the seat of arbitration, this Court is of the view,

that the judgment relied on by Mr. Rishav Banerjee does not help him. The Hon'ble Court was of the view that in case of a conflict between the forum selection clause and the clause providing for the seat of arbitration, the forum selection clause would prevail if there was a conflict, provided that the forum selected by the parties had jurisdiction in terms of Section 20 of the Code of Civil Procedure. Only if the forum selected by the parties had territorial jurisdiction over the subject matter, would the forum selection clause prevail over the clause prescribing the seat. In the present case, the forum selected is New Delhi and the seat of arbitration is Kolkata. The agreement was entered in Kolkata. The address of the respondent is Kolkata. The land in respect of which usage was given is in Kolkata and the records do not show accrual of any part of the cause of action at New Delhi. An averment has been made in the affidavit-in-opposition that the respondent also has an office in New Delhi, but there is nothing on record which would show that either of the parties at any point of time had acknowledged the presence of the respondent at New Delhi.

11. Under such circumstances, this Court not only has jurisdiction to entertain this application, this Court is also of the view that the reference should be allowed for the reasons mentioned hereinabove. The issue of limitations, the issue of mis-joinder of party, the issue as to whether the petitioner can take advantage of the arbitration clause in the usage agreement are all matters which should be decided by the

learned arbitrator. All objections raised by Mr. Rishav Banerjee can be urged before the appropriate forum. The observations hereinabove are restricted to the disposal of this application.

12. Accordingly, the Court appoints Justice Syamal Kanti Chakraborti, former Judge of this Court, [Mob. No. 9674156311] as the 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.

13. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)