

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/488/2025
CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
VS
MR. SAMIRUL SARDAR AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th August 2025.

Appearance:

Ms. Shrayashee Das, Adv.
Mr. Rohan Kr. Thakur, Adv.
Mr. Tridibesh Dasgupta, Adv.
...for petitioner.

Mr. Rabindra Kr. Mitra, Adv.
Mr. Sobham Kr. Pathak, Adv.
...for respondents.

1. This is an application for appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'). The respondents had raised an objection with regard to service of the notice invoking arbitration. A supplementary affidavit has been filed indicating that the notice invoking arbitration was served upon the respondents.
2. The respondents have not denied the contents thereof. Today, the respondents have raised an objection with regard to the maintainability of this application before this Court on the ground that clause 29 of the loan agreement provided that, the initiator of the dispute had an option of approaching either of the two institutions mentioned in the agreement, for

appointment of a sole arbitrator. As per the schedule of the agreement, the place of arbitration is Chennai, and this court lacks jurisdiction.

3. The existence of the arbitration clause is not in dispute. The fact that a loan agreement was entered into between the parties is not in dispute. An amount of Rs. 32,72,405/- was advanced to the respondents as credit facility, is also not in dispute. The respondents committed default.
4. The respondents' objected to the calculation of the dues made by the petitioner, but did not deny the factum of default. It appears that physical possession of the hypothecated assets was taken by a Receiver, upon order of a competent civil court. It further appears that a sole arbitrator had been appointed by the Alternate Dispute Redressal Centre. The respondents filed an application under Sections 12 and 14 of the Arbitration and Conciliation Act, 1996, challenging the said appointment and prayed for termination of mandate. When such application was filed, the learned arbitrator resigned from his position due to the objections raised.
5. The petitioner now submits that there is a due of Rs. 43,73,015.00.
6. As regards the submission of the learned advocate for the respondents with regard to the choice of forum, this Court finds that when the petitioner approached the alternate dispute redressal centre and the sole arbitrator was appointed, the respondents had sought termination of the mandate on the ground of unilateral appointment. Thus, it is clear that

the respondents were not inclined to proceed with an arbitrator appointed by the alternate dispute redressal centre i.e., the institutions mentioned in the agreement. Moreover, in the notice invoking arbitration, the petitioner had informed the respondents that, the petitioner would approach either of the dispute redressal centres. To such notice, the respondents did not reply. On an application filed by the respondent seeking termination of mandate, the unilaterally appointed arbitrator by the alternate dispute redressal centre also resigned.

7. In my view, when an option was allowed to the party initiating arbitration to approach any one of the alternate dispute redressal centres for appointment of an arbitrator, the other party was required to agree to one of those institutions/centres. In this case, there was no such agreement. The respondents did not offer any opinion on this. Instead, when the petitioner approached the alternate dispute redressal centre and an appointment was made, the respondents challenged such appointment on the ground of the same being barred under the provisions of Section 12(5) of the said Act. Thus, the arguments of the respondents are self-contradictory. Section 11 (6) is applicable in this case as the mechanism provided under the agreement failed. The said provision allows a party to approach the Court when the mechanism prescribed under the agreement fails. The respondents did not agree to the appointment of the arbitrator by the centre, did not agree to the choice of the institution, but raises a question on the maintainability of this application.

8. The petitioner has rightly approached the Court for appointment of an arbitrator. With regard to the jurisdiction of this Court, it appears that the respondents are within jurisdiction. A part of the cause of action arose within the jurisdiction. The contention of Mr. Rabindra Kumar Mitra that the schedule provides Chennai as the seat is not correct. The schedule indicates that the place of execution of the agreement was Chennai. No seat has been mentioned. Cause of action is a bundle of facts. Part cause of action has arisen within the jurisdiction of this Court. The asset was within the jurisdiction of this court and repossessed from such jurisdiction. The jurisdiction of the Arbitrator, the arbitrability of the dispute, admissibility of the claim and the question of limitation etc. are all to be decided by the learned arbitrator, at the appropriate stage.
9. Under such circumstances, the application is disposed of. This Court appoints Mr. Farhan Ghaffar, Advocate (Mobile: 9830179148), as an 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 Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)