

ORDER

OCD-15

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/491/2025
M/S. SANY HEAVY INDUSTRY INDIA PVT. LTD.
VS
RAMESHWAR BABURAV SAHARE & ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 30th June 2025.

Appearance:-

Mr. Saptarshi Bhattacharjee, Advocate
Ms. Harshita Nath, Advocate
... for petitioner.

1. The affidavit of service is taken on record. The postal article has come back with the endorsement 'refused'. Refusal is good service. Thus, the matter proceeds in the absence of the respondents.
2. This is an application for appointment of an arbitrator. The petitioner seeks reference of the dispute to arbitration in terms of clause 23 of the Loan cum Hypothecation Agreement dated January 05, 2020. The petitioner is the assignee of the loan which was extended by Srei Equipment Finance Limited to the respondents. The said clause provides that all disputes arising out of interpretation of the agreement or any clause thereof shall be referred to a sole arbitrator to be appointed by the company. The provisions of the Arbitration and Conciliation Act, 1996, as amended will be applicable. The seat of arbitration and the jurisdiction will be as per the Schedule. The Schedule provides that the agreement

shall be subject to jurisdiction of Kolkata. Under such circumstances, this application has been filed.

3. It is no longer permissible in law for the company to appoint a sole arbitrator. Hence, this application has been filed before this Court for appointment of a learned arbitrator. The petitioner invoked the arbitration clause by a notice dated March 20, 2025. The said notice was sent to the address of the respondent as mentioned in the agreement. Under Section 3 of the Arbitration and Conciliation Act, 1996, service of the invocation notice is deemed to have been effected, as it was sent to the proper address. The dispute arises out of non-payment of instalments.
4. The respondents had approached Srei Equipment Finance Limited for purchase of equipments. The assignment of the loan took place on September 30, 2021. The loan cum hypothecation agreement contains a clause, permitting such assignment. The same is provided under clause 18 of the said agreement. The respondents were aware of the same and had signed the agreement without raising any objection as to the right of the lender to transfer or assign the loan.
5. Disputes arose when the repayment schedule was not adhered to by the respondents. The jurisdiction of courts at Kolkata had been agreed upon. This is provided in the schedule to the agreement. A notice was issued by the petitioner on January 31, 2024, demanding the unpaid dues to the tune of Rs.79,16,805.05 as on December 31, 2024. The factum of assignment of the subject loan to the petitioner by Srei Equipment

Finance Limited, was informed by the petitioner to the respondents, by the demand notice.

6. Although the petitioner is not a party to the agreement, the petitioner has stepped into the shoes of the original lender, upon assignment of the loan and is intrinsically connected with the business relationship between the parties to the agreement. The respondents were aware of the possibility of such transfer which had been provided in the loan agreement and had signed the document. The fact that the petitioner sought to be bound by the agreement, is available from the communications made.
7. Under such circumstances, this Court is of the, prima facie, view that the petitioner is entitled to invoke arbitration and seek directions for reference of the disputes to arbitration. However, whether the petitioner can seek enforcement of the contract or not, being a non-signatory, shall be decided by the learned arbitrator, if such objection is raised by the respondents.
8. Under such circumstances and considering the fact that there is a live dispute with regard to non-payment of the loan which was extended by the lender to the borrower, and there is an arbitration clause, this application for appointment of an arbitrator is disposed of by appointing Mr. Anindya Basu, learned Advocate, Bar Library Club, as the sole 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 her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

9. The application is disposed of.

(SHAMPA SARKAR, J.)

S.Kumar/R.D Barua