OCD 7

ORDER SHEET
AP-COM/507/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S ADITYA BIRLA CAPITAL LIMITED
VS
M/S BAIDYA ENTERPRISE AND ORS.

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

*Appearance:*
*Mr. Amar Singh, Adv.*
*Mr. Ranjit Singh, Adv.*
*Mrs. Tutul Das Singh, Adv.*
*Mr. Pranit Biswas, Adv.*
*Ms. Zoya Khanum, Adv.*
*Mr. Ratul Deb Banerjee, Adv.*
*...for the petitioner*

*Mr. Sukanta Ghosh, Adv.*
*Mr. Arghya Chatterjee, Adv.*
*...for the respondent nos.1 & 2*

The Court:

1. Affidavit of service is taken on record. The respondents have been duly served.
2. Aditya Birla Finance Limited merged with Aditya Birla Capital Limited by an order dated March 24, 2025 passed by the National Company Law Tribunal, Special Bench, Ahmedabad. The merged entity came to be known as Aditya Birla Capital Limited. All rights, liabilities, assets etc. of Aditya Birla Finance Limited vested with the petitioner thereafter.

3. Aditya Birla Finance Limited had extended the loan facility to the respondents and the respondents had mortgaged an immovable property being at Kripalpur Dakshin Para, Gouribhoj, Deganga, North 24 Parganas, West Bengal-743445, Khatian No – 2910, Plot No – 1457, J.L. No – 23, under Chaita Gram Panchayat, Basirhat on the terms and conditions contained in the said loan agreement dated 27th August, 2022.
4. The loan agreement was signed between the parties that is the petitioner and the erstwhile Aditya Birla Finance Limited on August 27, 2022 at the branch office of the petitioner at Chowringhee Road. The respondents were required to make payment in terms of the repayment schedule for the total loan amount of Rs.22,00,000/-. The payment was to be made in 262 monthly instalments of Rs.28,564/- each. Allegedly, a few instalments were paid, but thereafter the respondents neglected to make payments. As on November 5, 2024, a sum of Rs.24,11,065.38/- became due and payable.
5. The petitioner terminated the loan and also moved an application under Section 9 of the Arbitration and Conciliation Act, 1996. An order of injunction was passed for a period of six months on February 19, 2025, restraining the respondents from creating any third party interest or making any addition or alteration or modification to the nature and character of the mortgaged property. Subsequently, the order of injunction was extended till 20th August, 2025, vide order dated 10th April, 2025. Accordingly, the application for injunction was disposed of

granting liberty to the petitioner to constitute an arbitral tribunal. By a letter dated April 10, 2025, the arbitration clause was invoked and as the respondents did not reply, this application has been filed.

6. As the petitioner is the merged entity and all rights, obligations, assets, liabilities of Aditya Birla Finance Limited vested with the petitioner which includes the loan agreement and the right to recover the loan. The petitioner claims to have stepped into the shoes of the lender. Clause 22 of the agreement provides that the place of arbitration shall be either Delhi or such other place as per the lender's discretion. By the notice dated November 5, 2024, the petitioner called upon the respondents to make payment, making them jointly and severally liable to repay the amount of Rs.24,11,065.38/- failing which, the petitioner reserved the right to proceed for arbitration. By the said notice, the petitioner, as the lender, also selected the seat to be within Kolkata jurisdiction. The letter was duly received by the respondent. On April 10, 2025, the petitioner invoked arbitration and chose Kolkata as the place of arbitration. The petitioner referred three names of learned advocates to the respondents, as a choice for appointment as an arbitrator.

7. Considering the fact that there was a loan extended by the predecessor-in-interest of the petitioner and that in view of the merger, the petitioner is the entity which has chosen to be bound by the arbitration agreement, the application is allowed. The jurisdiction clause provides for an option to the lender to choose the place of arbitration. The lender

has chosen the place for arbitration as Kolkata. Such information was also provided to the respondents by two notices.

8. The objections available to the respondents including the issue of limitation, the calculation made by the petitioner and whether the petitioner can seek arbitration on the basis of the agreement to which the petitioner is not a signatory, shall be decided by the learned arbitrator. Issues of non-joinder, mis-joinder etc. are within the domain of the learned Arbitrator.

9. Accordingly, the Court appoints Mr. Shayak Mitra, learned Advocate, (Mob. No. 8902005746) 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.

10. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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