

OCD 5

ORDER SHEET
AP-COM/551/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CHOLAMANDALAM INVESTMENT AND FINANCE CO. LTD.
VS
SWAPAN KUMAR MONDAL AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 24th July, 2025.

Appearance:
Mr. Shrayashee Das, Adv.
Mr. Rohan Kumar Thakur, Adv.
Mr. Tridibesh Dasgupta, Adv.
...for the petitioner

Mr. Anirban Pal, Adv.
Mr. Jhantu Kundu, Adv.
Mr. Rahul Ghosal, Adv.
...for the respondents

1. This is an application for appointment of a learned Arbitrator. The dispute arises out of the loan agreement dated July 30, 2023.
2. The petitioner claims to have advanced Rs.55,55,000/- to the respondents. The loan was repayable in 59 monthly instalments. The tenure of the loan was to end on June 28, 2028.
3. According to the petitioner, the respondents failed and neglected to adhere to the repayment schedule and a recall notice as also a notice invoking

arbitration was issued. The matter was referred to an Online Dispute Resolution Platform. Despite receiving the said notice, various endeavours were made to negotiate with the respondents but they failed. The Online Dispute Resolution Platform issued a letter by appointing a sole arbitrator. When the proceedings commenced before the said arbitrator, the appointed arbitrator withdrew from his office. Accordingly, the petitioner has filed an application under Section 11 for appointment of a learned Arbitrator as per the prevailing law. There are existing dues of more than Rs.16 lakhs.

4. Clause 29 of the agreement provides for arbitration and the same is quoted below:-

“29. ARBITRATION: All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or there after shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Company. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage left by his predecessor. The venue of arbitration proceedings shall be at Chennai or such other place/location/city which the Company at its discretion may decide from time to time.”

5. The learned advocate for the respondents submits that the total dues have been miscalculated. The vehicle/secured asset was already sold by the

finance company prior to invocation of arbitration. The sale proceeds therefrom covered the dues. In any event, the contentions of Mr. Anirban Pal, learned advocate for the respondent are factual matters which have to be proved in evidence.

6. Under such circumstances, this is a fit case for reference to the arbitration of a sole arbitrator. All questions raised by Mr. Pal, including the issue of arbitrability of the dispute, accord and satisfaction, limitation, miscalculation etc. shall be raised before the learned arbitrator. This Court has not expressed any opinion on the merits of the claim of the petitioner.
7. This Court appoints Mr. Sanjay Mukherjee, Advocate (Mobile No. 9836430202), 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.
8. The application is disposed of.

(SHAMPA SARKAR, J.)