

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/741/2025
SREI EQUIPMENT FINANCE LIMITED
VS
KITPLY INDUSTRIES LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 17th September, 2025.

Appearance:

Mr. Somdutta Bhattacharyya, Adv.

Mr. Prithwish Roy Chowdhury, Adv.

.... for the petitioner

Mr. Ratnanko Banerji, Sr.Adv.

Mr. Sumanta Biswal, Adv.

Sk. Saad Nafisul Islam, Adv.

...for the respondent

The Court: This is an application for appointment of a learned arbitrator, in terms of clause 9.4(b) of the Rupee Loan Agreement dated January 24, 2019 and arbitration agreement dated January 24, 2019. According to the petitioner, the agreements are interconnected and interlinked.

The petitioner is a non-banking finance company and claims to have extended loan facility to the respondent. The sanctioned amount was Rs. 130 crores. The loan was for a period of five years. Such period expired some time

in January, 2024. The principal amount became due immediately after the expiry of the period. During the pendency of the loan facility, the respondent was required to service the interest.

According to the petitioner, part of the interest was serviced and substantial portion of the interest and principal had falling due. To secure the loan, a deed of hypothecation dated June 4, 2019 was executed in favour of the petitioner. Charge by way of hypothecation was created on the assets and properties which had been described in schedule 1 of the agreement. Such charge also included the trade mark/brand kitply. The holding company of the borrower, Plytinum Marketing Private Limited also undertook to secure the loan by pledging 100 % of the subscribed and fully paid-up voting equity share capital of the respondent.

Charge was also created on the bank accounts of the borrower. The respondent failed to repay the loan. It appears that dispute cropped up between the parties for non-payment of the loan and non-servicing of the interest. Therefore, an application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the petitioner, inter alia, for certain interim reliefs. The said application was disposed of by an order dated July 2, 2025, restraining the respondent from alienating, removing, transferring and changing the nature and character of its assets and securities. Prayer for

injunction on the bank accounts and movable assets and the brand name Kitply, was not granted.

Such order was challenged in an appeal and the Appeal Court did not interfere with the order of injunction, but remanded the matter for hearing, upon exchange of affidavits. This Court had directed that the order of injunction would remain valid for three months and parties should take recourse to arbitration. Accordingly, the notice invoking arbitration was issued on July 28, 2025. Pursuant to the direction given by this Court, the arbitration clause was invoked in accordance with law and the application has been filed before the Court for appointment of a learned arbitrator.

Mr. Ratnanko Banerji, learned senior advocate for the respondent has raised various objections with regard to the claim of the petitioner and submits that the petitioner had already initiated proceeding before the NCLT, Kolkata. The documents relied upon by the petitioner were unstamped and unregistered and as such no rights could emanate therefrom. Moreover, the money given to the respondent were not credit facilities. The money was subjected to round tripping. In the application under Section 66 of the Insolvency and Bankruptcy Code, 2016, a plea was taken that the transaction between the petitioner and respondent was a fraudulent one. The petitioner cannot approbate and reprobate. The petitioner's stand before one forum was that the transaction

was illegal and fraudulent. Now, the petitioner cannot seek adjudication of the issues involved and claim recovery of such money.

All the objections raised by Mr. Banerji are triable. The referral Court is only required to satisfy itself about the existence of the arbitration clause and whether invocation was made in accordance with law. There is no dispute that each of agreements relied upon by the petitioner contain an arbitration clause and parties had agreed to refer the dispute to arbitration. The other objections including the objection that the documents were unstamped, shall be raised before the learned arbitrator at the appropriate stage.

With the above observations, this application is allowed by appointing Justice Indra Prasanna Mukerji, former Chief Justice of the Meghalaya High Court as the sole arbitrator, to arbitrate upon the dispute between the parties.

This appointment is subject to compliance of the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)