

OCD-12

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION

AP-COM/852/2024

TATA CAPITAL LIMITED
VS
DEBABRATA RAY

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date :20th January, 2025.

Appearance:
Mr. Dwaipayan Banerjee, Adv.
Mr. Abir Das, Adv.
...for the petitioner.

The Court: Affidavit of service is taken on record.

Substituted service has been effected in 'Business Standard' and in 'Pratidin' (in the State of Odisha). The e-publication of the said newspapers have been annexed to the affidavit of service.

Despite service, none appears on behalf of the respondent.

Liberty is granted to the petitioner to correct the description of the application.

The petitioner prays for appointment of a substitute Arbitrator upon recusal of the sole Arbitrator who was unilaterally appointed by the petitioner.

The petitioner is a finance company. A loan was sanctioned in favour of the respondent by executing an agreement for business loan dated

February 17, 2020. Under the terms of the said agreement, the loan was to be repaid in 70 months (69 instalments). A provision for grant of moratorium for 14 months was also made in the agreement. The contention of the petitioner is that the payments were not made in terms of the agreement and a demand notice as also a loan recall notice was issued. As the respondent did not act upon such notice and continued to commit default. A notice invoking arbitration was issued by the petitioner on February 13, 2023. The respondent did not respond and the dispute was referred to the learned sole Arbitrator.

It is contended that the petitioner is entitled to a sum of Rs.12,48,031/- along with interest, which approximately comes to around Rs.15.50 lakhs.

The sole Arbitrator recused by a letter dated February 12, 2024. Upon recusal of the sole learned Arbitrator, the petitioner has approached this Court for appointment of the substitute Arbitrator.

The agreement provides for resolution of disputes by way of arbitration under the Arbitration and Conciliation Act, 1996. The jurisdiction clause provides that the parties may agree to a Tribunal or Court as set out at serial no.14 of Annexure 1 to the loan agreement. In this case, the parties agreed to the place arbitration as Kolkata.

Under such circumstances, this Court appoints Mr. Ishaan Saha, learned Advocate of this Court as Arbitrator, to arbitrate upon the disputes between the parties as the substitute Arbitrator. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act. The proceedings shall continue from the stage, it was last held before the erstwhile learned Arbitrator.

The petitioner will be at liberty to take back all the documents from learned Arbitrator and place the same before the present Arbitrator.

This order is not an adjudication on the merits of the claim of the petitioner.

The respondent shall be at liberty to raise all questions, including the arbitrability/validity of the claim of the petitioner before the learned Arbitrator.

This order shall be communicated to the respondent by the petitioner.

AP-COM/852/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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