

OCD 4

ORDER SHEET
AP-COM/800/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED
VS
M/S. KEDARESHWAR INFRASTRUCTURE
DEVELOPERS PVT. LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 16th December, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Ms. Rupjaani Sen, Adv.
. . .for the petitioner.

The Court:

1. Affidavit of service is taken on record. Substituted service has been effected.
2. Under such circumstances, the matter proceeds. None appears on behalf of the opposite parties, despite substituted service.
3. The dispute between the parties arose out of a Master Facility Agreement dated September 23, 2019. Clause 9.11 of the said agreement provides for settlement of disputes arising out of the contract by arbitration. It also provides that the arbitration shall be held at Kolkata. Forum at Kolkata will have exclusive jurisdiction as per the

clause. Under such circumstances, this Court has the jurisdiction to entertain the application.

4. The respondent no.1 allegedly approached the petitioner to obtain a loan for acquiring some machinery for the purpose of construction and mining. The Master Facility Agreement dated September 23, 2019, was entered into. The petitioner contends to have provided financial assistance in two tranches. An amount of Rs.2,65,59,422/- under the repayment schedule no.180829 and thereafter Rs.3,56,13,978/- under the repayment schedule no.180563, were provided under the said facility agreement. The Facility Agreement containing two repayment schedules was signed and executed by the parties. The respondent no.2 also executed a corporate guarantee agreement in favour of the petitioner, guaranteeing the repayment of the loan facility as per the schedules.
5. It is contended that the respondent no.1 had utilized the entirety of the loan, but had failed to make repayment as per the schedule. According to the petitioner, the total outstanding in respect of both the tranches would amount to approximately Rs.1,50,00,000/-. The loan recall/termination notice, was issued and the arbitration clause was invoked. As the amount outstanding remained unpaid and the respondents did not accede to the request for appointment of an Arbitrator, this application has been filed.
6. The mechanism provided in the agreement for appointment of an Arbitrator is no longer permissible in law, in view of Section 12(5) of the

Arbitration and Conciliation Act, 1996. The lender cannot appoint an Arbitrator.

7. Under such circumstances, the application is disposed of by appointing Mr. Nayan Chand Bihani, learned Senior Advocate, 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.
8. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.
9. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)