

OCD 5

ORDER SHEET
AP-COM/902/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

PROFECTUS CAPITAL PRIVATE LIMITED
VS
KALIPADA MONDAL AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 18th December, 2025.

Appearance:
Mr. Sourajit Dasgupta, Adv.
Mr. Shreyashi Maity, Adv.
. . .for the petitioner.

The Court:

1. This is the second affidavit of service filed in this matter. The respondents have been served. They do not appear.
2. The petitioner is a non banking financial company. The respondents availed of a loan facility from the petitioner to the tune of Rs.33 lakhs and an immovable property was hypothecated as a security. It is submitted that a facility agreement was entered into on August 31, 2022. On the basis thereof the amount was disbursed. The same was to be repaid (principal + interest) in 96 equal monthly instalments. It is submitted that 12 instalments were paid. The 13th instalment was paid

in part. The loan account was declared as an NPA and a notice under Section 13(2) of the SARFAESI Act, 2002 was issued. A demand was raised by a letter dated November 25, 2023. The loan was recalled. By a letter dated January 8, 2024, the respondent no.1 informed the petitioner that an application had been filed before the concerned officer of the petitioner, requesting extension of time for repayment. The company did not accept such request.

3. The petitioner also filed an application under Section 14 of the SARFAESI Act, to take over possession of the property which was hypothecated. It is submitted that possession was taken, but the respondents forcefully entered into the premises and started residing there.
4. Under such circumstances, an application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed. Another application under Section 14 of the SARFAESI Act was also filed. An order of injunction was passed, restraining the respondents from operating their bank account. Thereafter, by a notice dated August 23, 2025, the arbitration clause in the facility agreement was invoked. The Dispute Resolution Clause in the agreement provides that any dispute or disagreement arising out of the Facility Agreement shall be submitted to arbitration and shall be finally resolved by a sole Arbitrator who shall be appointed by the petitioner. The appointment of the Arbitrator by the petitioner cannot be permitted in law, the same being hit by the

provision of Section 12(5) of the Arbitration and Conciliation Act, 1996. This application has been filed before the Court for appointment of a sole Arbitrator. The venue and seat of arbitration as per the 5th Schedule of the Facility Agreement is Kolkata.

5. Under such circumstances, the Court appoints Ritoban Sarkar, as the learned Arbitrator, to arbitrate upon the dispute between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
6. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Arbitration and Conciliation Act.
7. All objections with regard to the arbitrability of the claims, admissibility thereof, limitation etc. are left open, to be decided by the learned Arbitrator.
8. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)