

ORDER

OC-30

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/984/2024

M/S. SANY HEAVY INDUSTRY INDIA PVT.LTD.
VERSUS
GANDHARV SINGH YADAV & ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 3rd March, 2025.

Appearance:

Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Sayani Gupta, Adv.
... for the petitioner.

1. Affidavit of service is taken on record.
2. Although the respondents had been served, the Court had directed paper publication by way of abundant caution. Affidavit of service filed today indicates that paper publication in English and Hindi edition of the Business Standard were made. Despite such service, none appears on behalf of the respondents.
3. The petitioner is the assignee of a loan. The assignor is Srei Equipment Finance Ltd. The respondent no.1 is the borrower and the respondent no.2 is the guarantor. A loan cum hypothecation agreement dated February 15, 2020 was entered into between Srei

Equipment Finance Ltd. and the respondents. Credit facility for an amount of Rs.43,77,500/- was advanced by Srei Equipment Finance Ltd.

4. Learned Advocate for the petitioner relies on the contract and terms and conditions thereof, to substantiate that the contract provided for such assignment. Clause 18 of the said contract provides for assignment and transfer of the loan. The respondents signed the agreement being fully aware of the said clause. Upon assignment of the said loan, the petitioner stepped into the shoes of the lender. It is submitted that the petitioner is now bound by the terms and conditions of the agreement. The respondents defaulted. The loan recall notice was issued by the petitioner on May 31, 2024 and the demand was made. The credit facility was accordingly terminated. In the loan recall notice, the issue of assignment was also elaborately enumerated. Finding no other alternative, the petitioner invoked the arbitration clause i.e. Clause 23 of the contract.
5. It is the specific case of the petitioner that the said clause provides for appointment of a learned Arbitrator by the petitioner company/lender and such mechanism is no longer supported by the settled legal proposition, after amendment of the Arbitration and Conciliation Act, 1996. Thus, this application has been filed before the Court for appointment of a sole Arbitrator.

6. On June 8, 2024 when the respondents did not pay the dues despite demand, the notice invoking arbitration was issued. Postal track report annexed to the application indicates that the said notice was refused. Endorsement of the postal authority is available on record. Refusal is a good service.
7. Accordingly, the prayer for appoint of a learned Arbitrator is allowed.
8. The application is disposed of by appointing Mr. Chayan Gupta, learned Advocate (M No.7980480010) of this Court as learned Arbitrator, to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
9. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.
10. AP-COM/984/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)