

ORDER SHEET
AP-COM/985/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S SANY HEAVY INDUSTRY INDIA PVT. LTD.
VS
SAGAR BUVASAHEB KOLHE AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 2nd January, 2025.

Appearance:
Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Ruchira Manna, Adv.
...for the petitioner

The Court: Affidavit of service is taken on record. The respondents have refused service. Refusal is good service. The postal articles with the endorsement 'refused' have been filed in court. Thus, the matter proceeds ex parte.

The petitioner is the assignee of the loan account of the respondent no.1/borrower. The respondent no.2 is the guarantor. The assignment of the loan was made in favour of the petitioner on the basis of a settlement agreement entered into between the petitioner and Srei Equipment Finance Limited. It is

urged before this Court that the contract entered into between Srei Equipment Finance Limited and the respondent contained an assignment clause and the respondents were bound by such clause after having accepted the same at the time of execution of the agreement and acceptance of the loan facility. The respondent allegedly did not pay the regular instalments. Clause 23 of the agreement has also been relied upon in support of the contention that the agreement provides for settlement of dispute by a sole arbitrator. The clause provides that the sole arbitrator would be appointed by the company. It is submitted that the provision for unilateral appointment is no longer valid in view of the decision of the Hon'ble Apex Court and thus, this Court has been approached for necessary orders.

It is stated that after the assignment demand notice were issued to the respondent asking the respondent to pay up the dues. A loan recall notice was also issued as the respondent defaulted. Reference is further made to the notice invoking the arbitration dated June 8, 2024. It is submitted that the notice was refused. The postal receipt has been annexed to the application. The demand notice and the loan recall notices were also refused.

Srei Equipment Finance Limited had sanctioned the credit facility for an amount of Rs. 64,80,000/-, to be repaid in 48 monthly instalments of Rs. 1,79,853.56/- each. On account of default, a sum of Rs. 96,94,580.76p. is due and payable by respondent no. 1 as the borrower and the respondent no. 2 as the guarantor. As the borrower was irregular in making the payment of instalments, the credit facility was recalled and demand notice which has been mentioned

earlier was issued. It, prima facie, appears that there is also a clause which makes the borrower bound by the assignment. The notice invoking arbitration is on record. The jurisdiction has been conferred on courts at Kolkata. Non-payment/default by and from the date of assignment is, prima facie, also available from record. In the prima facie view of the Court, the arbitration clause in the agreement stood assigned as well and accordingly this application has been filed for appointment of the arbitrator.

Reference is made to the decisions of **Chloro Controls India Private Limited vs. Severn Trend Water Purification Inc. and ors.** reported in **(2013) 1 SCC 641** and **Cox & Kings Ltd. vs. SAP India (P) Ltd.** reported in **(2024) 4 SCC 1**. Further questions as to whether a non-signatory can raise a dispute or whether the arbitration clause stood assigned or whether the petitioner has any legal claim against the borrower and the guarantor, can be decided in the arbitration if such question is raised by the respondents.

Under such circumstances, the Court appoints Mr. Debanik Banerjee, learned advocate (Mob. No. 9830308225) as the Sole Arbitrator, to arbitrate the dispute. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

Learned Arbitrator shall fix his own remuneration as per the schedule of the Act.

AP-COM 985 of 2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)