

OC-18

AP-COM/989/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S SANY HEAVY INDUSTRY INDIA PVT LTD
VS
BHANUPRATAP SINGH AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 11th February, 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.

On the last two occasions, despite service by speed post, the respondents did not appear before the Court.

By way of abundant caution the petitioner was directed to put insertions in two widely circulated dailies at the addresses of the respondents. Today, affidavit of service has been filed along with the paper publications. It appears that paper publications both in Hindi and English in the Business Standard have been made.

Under such circumstances, the Court proceeds to take up the matter in the absence of the respondents. The petitioner is a Finance Company. The petitioner claims to have extended loan facility to the respondent no.1. The respondent 2 was the guarantor. According to the petitioner, the credit facility was for an amount of Rs.47,25,000/-. The same was to be repaid in 48

instalments of Rs.1,24,000/- each. Allegedly, the respondents were irregular in making payments of the instalments and they acted in violation of the repayment schedule. Despite repeated requests and reminders the respondents neglected to pay the overdue instalments. Demand notice was, accordingly, issued on May 31, 2024, calling upon the respondents to jointly and severally pay a sum of Rs.96,95,811.98 together with interest and other charges, till the final payment or realization thereof, failing which necessary actions would be initiated against the respondents. The respondents failed to pay.

Under such circumstances, notice invoking arbitration was sent on June 8, 2024. As on February 20, 2024 the amount claimed by the petitioner was Rs.96,95,811.98. According to the petitioner, the said amount has increased on account of interest. The loan agreement provided for settlement of disputes by arbitration. The same is quoted below:-

“Any dispute and/or difference arising out of, concerning or touching upon the Agreement at any time during its subsistence or thereafter, including disputes and/or differences relating to the interpretation of the Agreement or any cause thereof, shall be referred to arbitration of a sole arbitrator to be appointed by the Company. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 read with Arbitration and Conciliation Amendment Act, 2015 (“Act”) and the rules framed thereunder, as amended/replaced from time to time. The arbitration shall be conducted by a sole arbitrator to be appointed by the Company in accordance with the provision of the Act. The arbitration

proceedings shall be conducted in the English language. Seat of the Arbitration Tribunal shall be same as of the Courts/Tribunal/Forums as mentioned in Loan Cum Hypothecation Schedule(s). The Award of the Arbitrator shall be final, conclusive and binding on all the Parties.”

The jurisdiction of Courts at Kolkata was agreed to between the parties. The invocation notice dated June 8, 2024 is available from the records.

Under such circumstances, this Court deems it fit to allow this application by appointing a learned Arbitrator. The Court appoints Hon’ble Justice Samapti Chatterjee, a former Judge of this Court as the 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.

The learned Arbitrator shall fix her own remuneration as per the provisions of the Arbitration and Conciliation Act.

AP-COM 989 of 2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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