

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/1034/2024
TATA CAPITAL LIMITED
VS.
SHIV BHUSHAN KUMAR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 2nd January, 2025.

Appearance:

Mr. Amritam Mandal, Adv.

Mr. Dwaipayan Banerjee, Adv.

Mr. J. Roy, Adv.

Mr. Abir Das, Adv.

Ms. Mahima Mukherjee, Adv.

Ms. Shipra Naskar, Adv.

. . .for the petitioner.

The Court : This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. The affidavit of service is taken on record. It appears that the respondent has been served at two addresses by speed post, by e-mail and through WhatsApp.

Under such circumstances, the Court is satisfied that the provisions of Section 3 of the Arbitration and Conciliation Act 1996 have been complied with.

Under such circumstances, the matter proceeds ex parte.

The petitioner is a non-banking financial institution which had extended credit facility of Rs.20,43,621/- to the respondent. The tenure of such facility was 60 months. Alleging default in payment of some of the instalments, the respondent sent a demand notice as also a loan recall notice on 26th October, 2024. In spite of receiving the loan recall notice, no steps were taken to pay the alleged amount. The claim of the petitioner at present is allegedly Rs.24,27,679.06.

The petitioner refers to clause 9 of the agreement which talks about settlement of disputes arising out of the credit facility agreement by arbitration, to be held at a place mentioned in serial no.13 of Annexure-1, i.e., Kolkata. The clause provides that the sole arbitrator will be appointed by the lender. The petitioner further refers to the notice invoking arbitration dated November 7, 2024. It appears that the petitioner had asked the respondent to nominate an arbitrator from the list/panel supplied by them. The respondent did not act upon the same. This court is of the view that the above mechanism is no longer valid in law. Arbitrators cannot be appointed from a panel to be supplied by the respondent.

Under such circumstances, the application is entertained.

Mr. Rishabh Karnani, learned Advocate [M: 9830714333] is appointed as the sole arbitrator, subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitrator shall fix his own remuneration as per the schedule of the Act.

This Court has not gone into the merits of the matter and the respondent is at liberty to raise all points as may be available to him.

AP-COM/1034/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)