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ORDER SHEET
AP-COM/1089/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

TATA CAPITAL HOUSING FINANCE LIMITED
VS
SUSHANTA RAJBANSHI AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 11th February, 2025.

Appearance:
Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.
Ms. Indrani Majumdar, Adv.
...for the petitioner

The Court: None appears on behalf of the respondent even today.

On the last occasion, none appeared on behalf of the respondents, despite service. The petitioner was directed to serve once again. The affidavit of service is produced before this Court showing service by speed post upon the respondents. Under such circumstances, the Court proceeds to take up this matter in the absence of the respondents.

The petitioner is a financial institution. The respondents obtained financial assistance to the tune of Rs.22,70,000/- and mortgaging a property at Kolkata. The loan was sanctioned on March 31, 2019 and the loan agreement was executed on April 24, 2019. The loan was to be repaid in 180 monthly instalments with an interest of 11.5%. The respondents received the full amount. The respondents were joint borrowers. The account was declared Non-Performing Assets (NPA) on June 3, 2022. Proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was also initiated. According to the petitioner, the respondents paid around 33 instalments, but the major portion of the amount is outstanding. Even the overdue instalments were not paid. Intimation and requests were made consecutively. The respondent no.1 had filed a complaint against the officials of the petitioner in Naihati Police Station on April 1, 2022. It appears that GR Case No.2723 of 2022 is pending in the Court of the learned Additional Chief Judicial Magistrate at Barrackpore. The petitioner challenged the said proceeding by filing an application under Section 482 read with Section 401 of the Code of Criminal Procedure. The High Court made certain observations, admitted the revisional application and also directed that the police authority should not take any coercive steps. The prayer before this Court is for appointment of a learned Arbitrator in terms of the Arbitration Clause. Clause 13 of the said agreement is quoted below:

> "*13. ARBITRATION*
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> *13.1.1. If any dispute, difference or claim arises between the Obligors and the Lender in connection with the Loan or the security or as to the interpretation, validity, implementation or effect of the Loan Documents or as to the rights and liabilities of the parties under the Loan Documents or alleged breach of the Loan Documents or anything done or omitted to be done pursuant to the Loan Documents, the same shall be settled by arbitration to be held in Mumbai/Delhi/Kolkata/Chennai as may be decided by the Lender in accordance with the Arbitration and Conciliation Act, 1996,*

or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned.

13.1.2 The Loan Documents shall be governed by the laws of India.

13.1.3 The Borrower agrees that subject to the provisions of Clause 13.1.1 above the courts of Mumbai or the venue of arbitration decided by the Lender in accordance with Clause 13.1.1 above alone shall have the exclusive jurisdiction to entertain and try all matters arising from and out of the Loan Documents. 13.1.4 Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or proceed to recover dues from the Obligors under the SARFAESI Act and/or the Recovery of Debts Due to Bank and Financial Institutions Act, 1993."

Notice invoking arbitration was also issued on September 21, 2024. A learned retired judicial officer was nominated by the petitioner. The said notice was received by the respondents. It is contended that the respondents did not act on the basis of the said notice and the petitioner has, thus, approached this Court for necessary orders. The existence of the arbitration clause is not in dispute. The fact that there was a loan agreement executed between the parties was also not in dispute. However, the correctness of the claims of the petitioner the validity of the agreement, the allegation of fraud and the method of calculation etc. are matters to be adjudicated by learned Arbitrator. The referral court is not required to delve deeper into these issues. All claims and corresponding objections fall within the jurisdiction of the arbitral tribunal. The total demand according to the petitioner is above Rs.38 lakhs. The jurisdiction clause provides four places for settlement of dispute by arbitration i.e., Mumbai, Chennai, Delhi and Kolkata. The lender has chosen Kolkata and all the respondents reside in West Bengal. The agreement was executed in Kolkata.

Under such circumstances, the Court appoints Mr. Debdeep Sinha, learned Advocate (Mob. No.9432322462), as the Arbitrator, to arbitrate the dispute. This order is 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.

AP-COM/1089/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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