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ORDER SHEET
AP-COM/1099/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SREI EQUIPMENTS FINANCE PRIVATE LIMITED
VS
ALLIUM TRADING PRIVATE LIMITED AND ORS.

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

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Ayan Chakraborty, Adv.
Ms. Sohini Mukherjee, Adv.
...for the petitioner

The Court: Affidavit of service is taken on record.

This is an application for appointment of a learned Arbitrator on account of recusal of the erstwhile learned Arbitrator. The recusal of the learned Arbitrator is recorded in the minutes dated August 27, 2024. It appears that learned advocate for the respondents requested the learned Arbitrator not to proceed on the ground that the appointment was unilateral. The learned Arbitrator accordingly withdrew himself on personal ground. On the withdrawal of the learned Arbitrator, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued afresh by the petitioner dated September 13, 2024.

On the last occasion, the Court recorded service upon the respondent no.3. However, the services upon the respondent nos.1 and 2 were incomplete.

Accordingly, an insertion in two widely circulated newspapers, one in English and one in Bengali, were directed to be made. The petitioner has handed over the affidavit of service which indicates that newspaper publications in the Business Standard and in Aajkaal were duly made. Copies thereof have been annexed to the affidavit of service. Under such circumstances, the Court proceeds ex parte.

The petitioner is a financial institution. The facility agreement dated July 15, 2019 was signed and executed between the parties. A sum of Rs.2,20,35,800/- was extended to the respondent no.1 as loan. The respondents were required to pay back the amount in 39 monthly instalments. The respondent nos.2 and 3 were the guarantors. The parties agreed to the jurisdiction of the Courts at Kolkata and the seat of arbitration was Kolkata. According to the petitioner, after payments of 33 instalments, the respondents neglected to pay the dues. The facility agreement was terminated by a notice dated August 2, 2024. The dispute was referred to the learned Sole Arbitrator. The learned Arbitrator proceeded. The respondents objected and as such, the learned Arbitrator recused. Another notice invoking arbitration was served.

According to the petitioner, the overdue amount is around 7,54,63,435/- which was calculated upto July 31, 2024. In view of the recusal of the unilaterally appointed learned Arbitrator, the petitioner once again issued notice invoking arbitration and has filed this application in accordance with the provisions of law under Section 11(6) of the Arbitration and Conciliation Act, 1996.

Clause 23 of the agreement is the arbitration clause. Any dispute and/or difference arising out of, concerning or touching upon the agreement at any time

during its subsistence or thereafter, were to be referred to arbitration of a sole arbitrator to be appointed by the Company. The seat of arbitration is Kolkata. The company is not in a position to appoint an Arbitrator in view of the present position of law and in view of the provision of Section 12(5) read with the Seventh Schedule of the of the Act.

Under such circumstances, the Court appoints Mr. Rohit Banerjee, learned Advocate (Mob. No.9163891670), as the Arbitrator, to arbitrate upon 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.

The objection, inter alia, with regard to the nature of the claim, calculation thereof, mode of payments etc. can be raised before the learned Arbitrator by the respondents. All points are left open for determination by the learned Arbitrator.

AP-COM/1099/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)