

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/27/2026
TATA CAPITAL LIMITED
VS
M/S. PRISHA TRADERS & OTHERS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 29th January 2026

Appearance:-

Mr. Jit Ray, Advocate
Mr. Aharnish Ghosh, Advocate
... for the petitioner.

Mr. Hareram Singh, Advocate
... for the respondents.

The Court:- This is an application for appointment of an arbitrator on the strength of clause 9 of the agreement for business loan. The petitioner submits that it is a non-banking finance company. In terms of the order of the National Company Law Tribunal, Mumbai, Tata Capital Financial Services Limited and Tata Cleantech Capital Limited merged with Tata Capital Limited. Thus, all the properties, assets, rights, benefits, interest, duties, obligations, liabilities, contracts, agreements, securities etc. of those two companies were transferred to the petitioner with effect from January 1, 2024. Tata Capital Finance Services Limited sanctioned a loan in favour of the respondents. The agreement stood transferred by virtue of the order of the National Company Law Tribunal, Mumbai. The respondents defaulted in payment of the loan. A loan recall notice was issued on August 12, 2025. Despite the issuance of the loan recall notice, no payment was made.

In the recital of the agreement for business loan, the expression “lender” includes its heir, successors and assigns. The dispute resolution clause provided that disputes arising out of the said agreement, would be resolved by arbitration and the place of arbitration would be Kolkata. The petitioner had issued a notice invoking arbitration on October 22, 2025, which was duly received by the respondents. Even if the petitioner is a non-signatory to the agreement, the petitioner acquired all rights, liabilities, agreement, business assets etc. of Tata Capital Financial Services Ltd. with effect from January 1, 2024, by virtue of the order of an appropriate forum.

The petitioner also submits that nomination of an Arbitrator from the panel supplied by the petitioner company, is no longer permissible under law and the petitioner has thus, approached this court.

Mr. Singh, learned advocate for the respondents, submits that the notice under Section 21 of the Arbitration and Conciliation Act, 1996 was not served upon the respondents. He next contends that the service of the notice via email was effected only on one respondent. Further, the courts at Kolkata do not have jurisdiction as ‘Kolkata’ was tick marked at serial nos.13 and 14 of the Schedule being Annexure-I to the business loan agreement, in the absence of the respondents. The parties had an option to decide the place of arbitration and/or jurisdiction of the courts at Delhi or Chennai or Mumbai or Kolkata or Bangalore. Thus, this Court does not have jurisdiction to take up the matter, as Kolkata was not agreed to as the place of arbitration.

I find that the notice invoking arbitration clearly indicated the mode and manner in which the petitioner has acquired right under the agreement and

had stepped into the shoes of Tata Capital Financial Services Ltd. The said notice was received by the respondents. The respondents did not object to the said notice. The same was not responded to.

In my prima facie view, even if the petitioner is a non-signatory, in view of the merger, the petitioner can invoke arbitration as the successor of the erstwhile lender.

In the matter of ***Ajay Madhusudan Patel v. Jyotrindra S. Patel***, reported in **(2025) 2 SCC 147**, the Hon'ble Apex Court held as follows:-

“82. An important factor to be considered by the courts and tribunals is the participation of the non-signatory in the performance of the underlying contract. In this regard, it was observed in Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] as follows : (SCC pp. 75-77, paras 123 & 126-27)

“123. ... The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The Unidroit Principle of International Commercial Contract, 2016 [Unidroit Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned; and

(f) usages.

126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

127. ... The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to determine whether the non-signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the non-signatory to be bound by the underlying contract or its arbitration agreement. The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the non-signatory based on objective evidence.”

In the matter of ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.***, reported in **(2013) 1 SCC 641**, the Hon’ble Apex Court held as follows:-

“70. Normally, arbitration takes place between the persons who have, from the outset, been parties to both the arbitration agreement as well as the substantive contract underlining (*sic* underlying) that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming “through” or “under” the signatory party as contemplated under Section 45 of the 1996 Act. Just to deal with such situations illustratively, reference can be made to the following examples in *Law and Practice of Commercial Arbitration in England* (2nd Edn.) by Sir Michael J. Mustill:

- ‘1. The claimant was in reality always a party to the contract, although not named in it.
2. The claimant has succeeded by operation of law to the rights of the named party.
3. The claimant has become a party to the contract in substitution for the named party by virtue of a statutory or consensual novation.
4. The original party has assigned to the claimant either the underlying contract, together with the agreement to arbitrate which it incorporates, or the benefit of a claim which has already come into existence.”

In the matter of **Cox & Kings Ltd. v. SAP (India) (P) Ltd.**, reported in **(2025) 1 SCC 611**, the Hon’ble Apex Court held as follows:-

“31.

169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural

justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.”

Merger is a transaction that combines companies or assets. All assets and liabilities of the merging companies are transferred to the surviving entity, meaning that, the new combined company assumes all the rights and legal obligations of both the original companies. Further adjudication is left to the learned Arbitrator.

With regard to the other objections of Mr. Singh, I am of the view that the notice invoking arbitration was addressed to each of the respondents. The postal receipts have been annexed to this application. Each of those postal articles was delivered Regent Park, which is the address of the respondents. There is no reason for the Court to draw a contrary presumption to what is available with the records. The petitioner has no other option, but to rely on the delivery report of the postal authorities. The petitioner does not have any control over the manner in which the postal authorities could indicate delivery of the postal articles. Secondly, Annexure-I was signed by the parties. Even if ‘Kolkata’ was ticked later, in such a case, there being multiple options left for choosing the place, Kolkata could also have jurisdiction.

This Court finds that the entire cause of action took place within the jurisdiction of this Court. Thus, even in the absence of any jurisdiction clause or a clause governing seat and venue, this Court would have jurisdiction to entertain the application for reference. Under such circumstances, the

objections taken by the learned advocate for the respondents are not tenable in law.

This Court refers the matter to arbitration by appointing Mr. Aman Agarwal, Advocate [Mob. No. 9674298464] as the sole arbitrator, to arbitrate upon the disputes. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix her remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

AP-COM/27/2026 is disposed of accordingly.

(SHAMPA SARKAR, J.)

S. Kumar