OCD-25

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/164/2026

TATA CAPITAL LIMITED
VS
SOUMEN NASKAR AND ANR

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 7th October, 2026.

Appearance:
Mr. Dwaipayan Banerjee, Adv.
Mr. Aharnish Ghosh, Adv.
...for the petitioner

Mr. Debabrata Roy, Adv.
Mr. Ankit Chatterjee, Adv.
...for the respondent

The Court: The petitioner has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a learned sole Arbitrator to adjudicate the disputes and differences arising out of the Loan Agreement dated 22nd October, 2021 entered into between the parties.

The petitioner, Tata Capital Limited, is the successor-in-interest of Tata Capital Finance Limited pursuant to the scheme of Amalgamation sanctioned by the National Company Law Tribunal, Mumbai by an order dated 24th November, 2023 with effect from 1st January, 2024.

The petitioner had sanctioned financial assistance in the form of Loan-Cum-Hypothecation facility for a sum of Rs.20,60,000/- to the

respondents for the purchase of a vehicle under the loan agreement dated 22nd October, 2021. It is the case of the petitioner that the respondents paid a few instalments but thereafter committed defaults in repayment, resulting in an event of default under the said agreement.

Upon such default, the petitioner issued a notice dated 26th September, 2024, calling upon the respondents to pay a sum of Rs.22,98,775/- stated to be outstanding as on 5th September, 2024. Thereafter, vide notice dated 21st October, 2025, the Petitioner invoked the arbitration agreement contained in Clause 9 of the loan agreement and called upon the respondents to take steps for constitution of the Arbitral Tribunal. Clause 9 provides for resolution of the dispute by a Sole Arbitrator and prescribes the procedure for appointment of the Arbitrator. The said Clause further provides that the seat of arbitration shall be at Kolkata.

It is the petitioner's contention that the said notice under Section 21 of the Act, was not replied to by the respondents nor did they take any steps for constitution of the Arbitral Tribunal.

The arbitration agreement contained in Clause 9 is not in dispute. The existence of a live dispute between the parties is also apparent from the material placed before this Court. The petitioner's notice dated 21st October, 2025 constitutes a valid invocation of the arbitration agreement.

Since the respondents failed to either respond to the said notice or take steps for the constitution of the Arbitral Tribunal, the petitioner has filed the present petition.

The existence of a valid arbitration agreement between the parties is evident from the Loan Agreement. The disputes raised by the petitioner arise directly out of the said loan agreement and are covered by the arbitration agreement. The petitioner has duly invoked the arbitration clause by issuing a notice under Section 21 of the Act dated 21st October, 2025. However, the respondents have failed to act in accordance with the agreed procedure for appointment of an Arbitrator.

It is now well settled principle of law that the jurisdiction of the court under section 11 of the Arbitration and Conciliation Act, 1996 is confined to a *prima facie* examination of the existence and validity of the arbitration agreement.

As per 11(6A) of the Act "*the Supreme Court or as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall notwithstanding any judgment decree or order of any court, confine to the examination of the existence of an arbitration agreement.*"

Accordingly, the scope of examination under Section 11 of the Act is confined to the existence of a valid agreement containing a valid arbitration clause.

Upon consideration of the materials placed on record, this Court is satisfied that the valid arbitration agreement exists between the parties and that live disputes have arisen thereunder requiring adjudication through arbitration.

In view of the same, this Court is, therefore, satisfied that the requirements under Section 11(6) of the Act stand fulfilled and that the disputes between the parties are fit to be referred to arbitration.

Accordingly, this Court appoints Mr. Shashwat Nayak, Advocate (Mobile No. 8910251490) as the learned sole Arbitrator to adjudicate the disputes and differences that have arisen between the parties out of the loan agreement dated 22nd October, 2021.

The learned Sole Arbitrator shall enter upon the reference after making the disclosure in terms of Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.

The learned sole Arbitrator shall be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act or as may be mutually agreed between the parties.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

It is clarified that all questions relating to the arbitrability of the disputes, maintainability, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned Sole Arbitrator, who shall decide the same in accordance with law.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

R.Bhar