

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**AO-COM/17/2026
IA NO: GA-COM/2/2026**

**KOBELCO CONSTRUCTION EQUIPMENT INDIA PRIVATE LIMITED
VS
LARA MINING**

AND

**AO-COM/18/2026
IA NO: GA-COM/2/2026**

**KOBELCO CONSTRUCTION EQUIPMENT INDIA PRIVATE LIMITED
VS
LARA MINING AND ANR.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Shatadru Chakraborty, Sr. Adv.
Mr. Bhaskar Dwivedi, Adv.
Mr. Hareram Singh, Adv.
Mr. Saptarshi Rajan Chatterjee, Adv.

For Respondent(s): Mr. Anirban Ray, Sr. Adv.
Mr. Varun Kothari, Adv.
Ms. Anshumala Bansal, Adv.
Mr. Shubhayan Chakraborty, Adv.

HEARD ON : 08.06.2026
DELIVERED ON : 08.06.2026

DEBANGSU BASAK, J.:-

1. Paper books filed in Court be taken on record.

2. Two appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order dated August 11, 2023.
3. By the impugned judgment and order dated August 11, 2023, learned Single Judge, dismissed two petitions under Section 9 of the Arbitration and Conciliation Act, 1996 being AP/181/2023 and AP/182/2023 filed at the behest of the appellant. Learned Single Judge held that, there was no subsisting arbitration agreement between the appellant and the respondent for the learned Single Judge to invoke Section 9 of the Act of 1996.
4. Learned Senior Advocate appearing for the appellant submits that, the learned Single Judge erred in holding that, there was no arbitration agreement between the appellant the respondent. He submits that, two several Master Facility Agreements dated January 19, 2020 were entered into between SREI Equipment Finance Limited and the respondent, being the subject matter of the two proceedings before the learned Single Judge. He submits that, right, title and interest in respect of the Master Facility Agreements between the lender therein, namely, SREI Equipment Finance Limited stood assigned to and vested with the appellant by virtue of the settlement agreement dated July 17, 2021 entered into between the appellant and SREI Equipment Finance Limited.
5. Learned Senior Advocate appearing for the appellant refers to various clauses of the Master Facility Agreements. He submits that, the Master Facility Agreements contemplate assignment of the Master Facility Agreements without notice thereof being given

by the lender to the respondent. He submits that, in any event, there was a notice issued by the appellant to the respondent subsequent to the Settlement Agreement being entered into with regard to the assignment of the Master Facility Agreement.

6. Learned Senior Advocate appearing for the appellant submits that, by virtue of the Settlement Agreement, all rights, title and interest in respect of the two several Master Facility Agreements both dated January 19, 2020 stood transferred to and vested in the appellant. According to him, there was a complete assignment of every right that the lender possessed under the two several Master Facility Agreements against the respondent.
7. Learned Senior Advocate appearing for the appellant relies upon **AIR 1962 SC 1810 (Khardah Company Ltd. Vs. Raymon & Co. (India) Private Ltd.)**, **AIR 1975 Cal 8 (M/s. Hindustan Steel Works Construction Ltd. Vs. M/s. Bharat Spun Pipe Co.)** and **2016 SCC Online Bom 5069 (DLF Power Limited Vs. Mangalore Refinery & Petrochemicals Limited)** in support of the proposition that, an arbitration agreement can be assigned. He submits that, there being a valid assignment of the Master Facility Agreements, the arbitration agreements, therefore, also stood assigned in favour of the appellant. The respondent is bound by the assignment. Therefore, there subsists a valid arbitration agreement between the appellant and the respondent.
8. Learned Senior Advocate appearing for the respondent submits that, the issue as to whether, there exists a valid arbitration agreement between the parties or not, need not be entered into

finally in an application under Section 9 of the Act of 1996. He submits that, the findings of the learned Single Judge are prima facie in nature and not binding upon the parties in the sense that, it does not prevent the parties from contending on either side of the divide. In other words, he submits that, the impugned judgment and order does not prevent the appellant from invoking Section 21 of the Act of 1996 or filing a petition under Section 11 of the Act of 1996. The issue as to the validity and existence of the arbitration agreement could be gone into by the Court under Section 11 of the Act of 1996 in the event, a proceeding of such nature was filed by any of the parties. He submits that, the findings returned by the impugned judgment and order will not prevent any of the parties in invoking Section 21 of the Act of 1996 or approaching the High Court under Section 11 thereof.

9. Without prejudice to his contentions, learned Senior Advocate appearing for the respondent relies upon **(2026) 3 SCC 711 (Hindustan Petroleum Corporation Limited Vs. BCL Secure Premises Private Limited.)** to contend that, the settlement agreement cannot be construed to be valid assignment of the arbitration agreement contained in the two Master Facility Agreements. He submits that, this contention of the respondent should be kept open to be decided by the Court under Section 11 of the Act of 1996 in the event, such an application is filed by the appellant.
10. On merits, learned Senior Advocate appearing for the respondent submits that, the appellant is not entitled to any relief therein

primarily on the basis of the findings returned by the learned Single Judge in the impugned judgment and order as also by the fact that, the appellant did not invoke Section 21 of the Act of 1996 or Section 11 thereof, expeditiously. He points out that, the petition under Section 9 of the Act of 1996 was filed on March 27, 2023 while, the impugned judgment and order is of August 11, 2023. He submits that, between the period of March 27, 2023 till August 11, 2023, the appellant did not take any steps under Section 21 of the Act of 1996 in filing any application under Section 11 thereof.

- 11.** Learned Senior Advocate appearing for the respondent submits that, the respondent does not accept the contention that, there subsists any valid arbitration agreement between the appellant and the respondent, either by virtue of the settlement agreement or otherwise. He submits that, this contention of the respondent should be kept open to be decided if at all, a petition under Section 11 of the Act of 1996 is filed.
- 12.** Two several Master Facility Agreements were entered into between SREI Equipment Finance Limited and the respondent on January 19, 2020. Under such Master Facility Agreements, the respondent was required to pay specified amounts to SREI Equipment Finance Limited. Security in respect of certain assets of the respondent was created in favour of SREI Equipment Finance Limited as security for repayment of his loan.
- 13.** Appellant entered into a settlement agreement with SREI Equipment Finance Limited on July 11, 2021. By such settlement

agreement, right, title and interest and obligations of SREI Equipment Finance Limited in the two subject Master Facility Agreements stood transferred and assigned to the appellant before us.

- 14.** The two several Master Facility Agreements contemplate assignment of the same. The relevant clause thereof is follows:-

“9.7 Assignment

The Company at any time shall have the right at its discretion to transfer all or any part of its rights, benefits and obligations under this Agreement to any Person without any notice and/or any permission from the Borrower. The Borrower shall not assign or transfer any of its rights or obligations under this Agreement without written consent from the Company.”

- 15.** The two several Master Facility Agreements also contain a dispute resolution clause being clause 9.11 which is as follows:-

“9.11 Dispute Resolution

Any disputes or differences arising out of or in connection with the Contract during its subsistence or thereafter between the parties including any disputes and differences relating to the interpretation of the agreement or any clause thereof shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules framed there under and any amendment, modification, statutory enactment thereto from time to time and shall be referred to the Arbitration of a sole Arbitrator appointed by the Company upon intimation to all parties to this Agreement. The proceedings shall be held at Kolkata. The cost of the proceedings shall be borne by the parties to this Agreement. The award of

the arbitrator shall be final, conclusive and binding on all the parties.”

- 16.** The Settlement Agreement also contains various clauses which, the appellant contends are assignment of all right, title and interest under the two Master Facility Agreements in favour of the appellant. Some of the clauses which, the appellant relies upon are clause D and clause 2.3 and they are as follows:

“(D) Hence, in consideration of Kobelco having agreed to provide the maintenance services to the Debtors and towards full and final settlement of the Outstanding Equipment Cost payable by SREI to Kobelco, SREI has agreed to instruct the Debtors to make payment of the Receivables under the aforesaid Underlying Agreements to Kobelco and SREI has also agreed that on and from the Effective Date, all its rights, title and interest in the Security shall also vest in Kobelco upon the terms and subject to the conditions hereinafter mentioned. Moreover, the Receivables shall be set off against the Outstanding Equipment Cost and the balance amount after the set off shall be paid by SREI to Kobelco within such time and in such form and manner as may be mutually agreed between the parties.”

“2.3. Vesting of Rights in the Security in Kolbelco:

As a part of the settlement process envisaged under this Agreement, the Parties have agreed that on and from the Effective Date, all its rights, title and interest in the Security shall also vest in Kobelco. On the from the Effective Date, Kobelco shall be entitled to declare from time to time one or more of the Debtors to be in default in terms of the Underlying Agreements. Kobelco shall also be entitled to exercise all rights and privileges and perform all activities for enforcement of the Securities created under

the Security Documents and to appropriate the proceeds realized out of the enforcement of the Securities.”

17. We are not minded to enter into the issue as to whether or not the Settlement Agreement constitutes a valid assignment of the arbitration agreement contained in the two Master Facility Agreements in favour of the appellant in view of the stand taken by the parties before us. It is the stand of the respondent that, the findings returned by the impugned judgment and order with regard to the non-existence of the arbitration agreement between the parties, is prima facie in nature and that, the same cannot be construed to be the final finding with regard to the existence of the arbitration agreement. According to the respondent, the issue as to whether or not there exist a valid arbitration agreement by way of assignment or otherwise between the parties, can be agitated at the appropriate forum and that, the findings returned by the impugned judgment and order is not an impediment for the parties in contend on either side of the divide. We accept such contention of the respondent in the facts and circumstances of the present case.
18. In such view, the issue as to whether or not, there exist a valid arbitration agreement between the parties is kept open to be decided by the appropriate forum. The observations and the findings returned by the learned Single Judge in the impugned judgment and order will not prejudice any of the parties in the subsequent proceedings. All points raised by the parties in this regard are kept open to be decided by the appropriate forum.

- 19.** So far as the issue of interim relief is concerned, we find that, the Section 9 petition was filed on March 27, 2023 and the impugned judgment and order was delivered on August 11, 2023. Between March 27, 2023 till August 11, 2023, the appellant did not take any steps under Section 21 of the Act of 1996. In view of such conduct of the appellant, we are not minded to interfere with the impugned judgment and order and decide on the issue as to whether, the appellant is entitled to interim protection or not.
- 20.** We clarify that, we did not enter into the rival contentions of the parties with regard to the claim for interim protection. All points raised by the parties in this regard are kept open.
- 21.** In view of the fact that, we left the issue as to the existence of the arbitration agreement open to be decided by the appropriate forum, at the invitation of the parties, we are not dealing with the authority cited at the bar on such issue.
- 22.** AO-COM/17/2026 and AO-COM/18/2026 along with connected application are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

- 23.** I agree.

(MD. SHABBAR RASHIDI, J.)