

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/377/2025
SREI EQUIPMENT FINANCE LIMITED
VS
BSC-C AND C JV AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 26th February, 2026.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Ms. Pritha Ghose, Adv. ...for petitioner.

Mr. Suman Kumar Datt, Sr. Adv.
Mr. Varun Kothari, Adv.
Mr. A. P. Agarwal, Adv. ...for respondents.

The Court: The petitioner is an existing company. The petitioner is engaged in the business of providing financial assistance to its customers to enable them to acquire various equipments on loan-cum-hypothecation basis. The respondent no.1 is a joint venture company. The respondent nos.2 and 3 are the constituent of the joint venture. The respondent no.4 is the personal guarantor.

The case run by the petitioner is that, on or about December, 2016, the respondents approached the petitioner for financial assistance. A facility agreement was entered into on January 1, 2017. Under the said agreement, the petitioner provided financial assistance to the tune of Rs.59,78,87,917/-. The principal plus interest were required to be paid back in 54 monthly instalments. The repayment schedule was revised. The respondent no.4 executed a personal guarantee agreement and agreed to guarantee the due performance of the obligation of the respondent no.1. Allegedly, the payments were not made after 38th instalment and part of the 39th instalment. As the respondents committed breach, the petitioner called upon the respondents through their learned advocate to pay an amount of

Rs.122,80,57,512/- within seven days from receipt of the notice. Thereafter, the notice invoking arbitration was issued on March 20, 2025.

Clause 9.11 of the agreement provides for settlement of disputes by an arbitrator. The proceedings were agreed to be held at Kolkata.

Mr. Banerjee, learned advocate for the petitioner submits that the disputes may be referred to a sole arbitrator. The clause provides for unilateral appointment by the lender, which is no longer permissible in law. Mr. Banerjee further relies on the correspondence exchanged between the parties which have been annexed to the application, to indicate that the liabilities of the joint venture had been bifurcated. The claim against the respondent no.3, which had gone into liquidation, had been satisfied under the waterfall mechanism. However, learned advocate contends that there are other claims against joint venture and the respondent nos. 2. The claim is over Rs.122 crores.

Mr. Datt, learned senior counsel submits that the claims are time barred. The lender was not entitled to bifurcate the claims amongst the constituents and the joint venture. The claims were joint and not severable. Therefore, the claims stood extinguished upon adjudication of the same by the liquidator in the proceedings under the Insolvency and Bankruptcy Code, 2016. The payment made by the Liquidator was in full and final settlement of the dues. Moreover, the Liquidator should have been made a party to this proceeding as the Liquidator would be in a position to clarify the situation with regard to the discharge of any debt which the joint venture/respondent no.1 owed to the petitioner.

Mr. Banerjee, however, objects to the submissions made by Mr. Datt and relies on the correspondence annexed to the application in support of his contention that, the claims were distinct and separate.

Having heard learned advocates for the respective parties, this court finds that there is a subsisting dispute. Whether, admission of the claim by the liquidator in the proceeding under the Insolvency and Bankruptcy Code against one of the constituents of the joint venture, would amount to total discharge of all the claims of the petitioner against the joint venture, is also a dispute. This must be decided by the learned Arbitrator. The issue of misjoinder, is also to be decided by the learned Arbitrator.

Under such circumstances, on the strength of the arbitration agreement, which the parties entered into for resolution of their disputes, the application is allowed. This court has not entered into the merits of the issues involved. The parties are at liberty to raise their respective objections and contentions before the learned Arbitrator, including those relating to arbitrability, limitation, impleadment of parties etc.

Under such circumstances, The Hon'ble Justice Biswanath Somadder, former Chief Justice of Sikkim and Meghalaya High Court, is appointed as the learned Arbitrator, to resolve the disputes between the parties.

This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

AP-COM/377/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

pkd.