

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

APOT 89 of 2026
IA NO: GA-COM/1/2026
Srei Equipment Finance Limited
Vs.
Bengal Shristi Infrastructure Development Limited

For the Appellant :Mr. Jishnu Saha, Sr. Adv.
Ms. Somdutta Bhattacharyya, Adv.
Ms. Debomita Sadhu, Adv.
Mr. Prithwish Roy Chowdhury, Adv.

For the Respondent :Mr. Samrat Sen, Sr. Adv.
Mr. Rishav Banerjee, Adv.
Mr. Saptarshi Mandal, Adv.
Mr. Keshav Tiberawalla, Adv.
Ms. Ahana Mukherjee, Adv.
Mr. Soumalya Ganguli, Adv.

Hearing Concluded on : June 10, 2026
Judgement on : June 24, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has assailed the judgment and order dated March 19, 2026 passed by the learned Single Judge in AP COM 193 of 2025.
- 2.** By the impugned judgment and order, learned Single Judge has disposed of the petition filed under Section 9 of the

Arbitration and Conciliation Act, 1996, by the appellant by holding that there was no incident of default which would necessitate urgent interim relief.

3. Learned Senior Advocate appearing for the appellant has submitted that, the appellant entered into a Rupee Term Loan Agreement dated April 2, 2019 with the respondent. Under the agreement, appellant made over sum of Rs. 273.48 crores to the respondent.

4. Learned Senior Advocate appearing for the appellant has referred to the various clauses of the Rupee Term Loan Agreement. He has submitted that, the Rupee Term Loan Agreement recorded that the respondent obtained consent of all relevant authorities to create mortgage of the housing projects. He has submitted that the arrangement between the parties was that, by utilising the funds made available by the appellant to the respondent, a township would be constructed. In order to secure the money lent and advanced by the appellant, respondent would create hypothecation and mortgage of assets.

5. Learned Senior Advocate appearing for the appellant has contended that, the respondent failed to create any mortgage of the immovable properties on the ostensible plea

that, relevant authorities did not permit the respondent to do so.

6. Learned Senior Advocate appearing for the appellant has contended that, failure on the part of the respondent to create mortgage in terms of the Rupee Term Loan Agreement by itself is an event of default. In any event, the Rupee Term Loan Agreement permitted acceleration of the agreement. In terms of the Rupee Term Loan Agreement, the appellant recalled the same and demanded full payment of the outstanding. He has submitted that, although the respondent is paying the monthly instalments, nonetheless, the respondent failed and neglected to pay the recalled amount.

7. Learned Senior Advocate appearing for the appellant has contended that, the appellant filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Kolkata which is pending.

8. Learned Senior Advocate appearing for the respondent has contended that, there is no default on the part of the respondent in paying the appellant in terms of the Rupee Term Loan Agreement. He has submitted that, the respondent

has paid the monthly instalment in terms of the Rupee Term Loan Agreement.

9. Learned Senior Advocate appearing for the respondent has contended that, the mortgage could not be created in view of the stand taken by the relevant authorities. He has contended that, the respondent cannot be faulted for non-creation of the mortgage as the events leading up thereto were beyond the control of the respondent.

10. Learned Senior Advocate appearing for the respondent has contended that, there is no urgency in granting any interim relief. He has contended that, the Rupee Term Loan Agreement was entered into on April 2, 2019. Thereafter, there was a subsequent agreement dated May 6, 2020 which amended the Rupee Term Loan Agreement. He has referred to various clauses under the two agreements and in particular to Article 4.2 thereof.

11. Referring to Article 4.2 of the Amendatory and Supplementary Rupee Term Loan Agreement dated May 6, 2020, learned Senior Advocate appearing for the respondent has contended that, Article 3.1 of the Rupee Term Loan Agreement stood amended, modified and replaced.

12. Learned Senior Advocate appearing for the respondent has submitted that, the alleged non creation of the mortgage was noticed by the appellant in October 1, 2024 when, by a letter of such date, the appellant, wrote to the Asansol Durgapur Development Authority with regard to the issuance of no-objection certificate by such authority for the purpose of creation of the mortgage. He has contended that, the appellant was aware that, Asansol Durgapur Development Authority did not grant no-objection certificate for the purpose of creation of mortgage and therefore, the mortgage could not be created. In this regard, he has also referred to the letter dated August 17, 2024 written by the appellant to Asansol Durgapur Development Authority.

13. Referring to Clause 5.3.3 of the Rupee Term Loan Agreement, learned Senior Advocate appearing for the respondent has submitted that, creation of security depended upon the issuance of no-objection certificate by Asansol Durgapur Development Authority.

14. Learned Senior Advocate appearing for the respondent has contended that, there being no event of default occurring in terms of the Rupee Term Loan Agreement or the Amendatory and Supplementary Loan Agreement, the

question of grant of any interim protection to the appellant does not arise. He has contended that, the learned Single Judge rightly rejected such prayer by the impugned judgment and order.

15. Appellant had agreed to lent and advance a sum of Rs. 275 crores to the respondent for the purpose of financing a construction project known as “Shristi Nagar Project”. Appellant had disbursed a substantial portion of the agreed amount to the respondent.

16. As security for such loan, parties executed a Rupee Term Loan Agreement dated April 2, 2019, and a deed of hypothecation dated April 10, 2019. Thereafter, parties executed an Amendatory and Supplementary Rupee Term Loan Agreement dated May 6, 2020 modifying certain terms and conditions of the Rupee Term Loan Agreement. An Amended and Restated Deed of Hypothecation dated May 6, 2020 was also executed between the parties.

17. Apparently there are no disputes with regard to the hypothecation which, the respondent was required to create. Disputes are with regard to the mortgage that the respondent was required to create in terms of the Rupee Term Loan Agreement dated April 2, 2019 and the Amendatory and

Supplementary Rupee Term Loan Agreement dated May 6, 2020.

18. Relevant Articles of the Rupee Term Loan Agreement for the purposes of this appeal are as follows :-

“2.11 Debt Service Reserve

(i) The Borrower shall, on or prior to the Initial Disbursement Date, create and thereafter maintain, at all times until the Final Settlement Date, the DSR, in such form and manner as required by the Lender to the satisfaction of the Lender. The DSR shall be created and maintained by the Borrower with the Lender or in such other manner as may be advised by the Lender.

(ii) The Borrower agrees that –

(a) the amounts accumulated in the DSR shall be utilized as provided under this Agreement and the other Financing Documents.

(b) The DSR shall be utilized only in case of a shortfall in cash flows for meeting debt service requirements from time to time; and

(c) If at any time any amount is so utilized, the Borrower shall immediately credit the designated account (if any) or such other account or as may be advised by the Lender for the amount so utilized.

(iii) the amounts accumulated in the DSR will be interest bearing linked to the tenure and rate of interest as may be decided by the Lender.”

“3.1 The Obligation of the Borrower shall be secured by way of :-

3.1.1. An exclusive first charge on the Mortgaged Property under the Mortgage Documents;

3.1.2. Charge by way of Hypothecation on Receivable under the Deed of Hypothecation;

3.1.3. Exclusive charge over the Debt Service Reserve created and maintained by the Borrower with the Lender or in such other manner as may be advised by the Lender.

(The security specified in this Article 3.1 is referred to as the "Security" which shall include any further or additional Security Interest created in terms of Article, 3.4 hereof)"

"8.3.1 Acceleration

Lender may declare the Loans and all accrued interest thereon and all other monies in respect of the Loans, to be forthwith due and payable, whereupon such amounts shall become forthwith due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary."

19. Relevant article of the amendatory and supplementary Rupee Term Loan Agreement dated May 6 2020 for this appeal are as follows:-

"4.2 Article 3.1 of the Loan Agreement shall stand amended, modified and replaced (as the case may be) by the following:"

" 4.2.1 The Obligation of the Borrower shall be secured by way of :-

3.1.2. Exclusive charge and/or mortgage of the Mortgaged Property 1 under the Mortgage Documents:

3.1.2. Exclusive charge and/or mortgage of the Mortgaged Property 2 under the Mortgage Documents;

3.1.3. Exclusive charge and/or hypothecation of the Receivables under the Deed of Hypothecation;

3.1.4. Negative Lien on sale/transfer of the Mortgaged Property till such time the mortgage is created and perfected in favour of the Lender;

(The security specified in this Article 3.1 is referred to as the “Security” which shall include any further or additional Security Interest created in terms of Article 3.4 hereof). ”

“4.4.1 Creation/Perfection of Security

The Borrower shall, within 60 days post receipt of no objection certificate from ADDA have created and perfected the Security mentioned in Articles 3.1.1 and 3.1.2.”

20. Article 2.11 of the Rupee Term Loan Agreement dated April 2, 2019 obliges the respondent to create and maintain at all times until the final settlement deed, the Debt Service Reserve, in such form and manner as required by the appellant and to the satisfaction of the appellant. Debt Service Reserve is required to be created and maintained by the respondent with the appellant or in any other manner as may be advised by the appellant.

21. Under Article 3.1 of the Rupee Term Loan Agreement dated April 2, 2019, respondent was required to create exclusive first charge on the mortgaged property and create charge by way of hypothecation receivable under the deed of hypothecation respondent was also required to create exclusive charge over the Debt Service Reserve created and maintained by the respondent with the appellant or in such other manner as may be advised by the appellant.

22. Article 8.3.1 of the Rupee Terms Loan Agreement allows the appellant to declare the loan and accrued interest thereof and all other moneys in respect of the loan to be forthwith due and payable upon which, the respondent would be obliged to repay. Appellant issued a notice recalling the loan facilities. On refusal of compliance thereof, appellant filed proceedings under the Insolvency and Bankruptcy Code, 2016 which are pending.

23. By Article 4.2 of the Amendatory and Supplementary Rupee Term Loan Agreement dated May 6, 2020 the respondent agreed to secure the appellant by mortgage of the mortgaged property 1 and 2 under the mortgaged documents.

24. Under Article 4.4.1 of the Amendatory and Supplementary Rupee Term Loan Agreement respondent agreed to create and perfect security mentioned in Articles 3.1.1. and 3.1.2 of the Rupee Term Loan Agreement within 60 days of receipt of no objection certificate from Asansol Durgapur Development Authority.

25. The documentation executed by the parties as security for the loan agreement by the appellant to the respondent requires the respondent to create mortgage of the financed project in favour of the appellant. Mortgage of immovable

property is yet to be created. Justification for non creation canvassed by the respondent is non issuance of no objection certificate by Asansol Durgapur Development Authority.

26. The issue of interim protection is required to be considered in the context of the factual matrix as noted above. The amount lend and advanced by the appellant to the respondent as on date, remains unsecured to the extent of no mortgage being created while, the agreement between the parties postulated creation of mortgage as security for the loan.

27. Appellant has recalled the entire loan facility and proceeded under the Insolvency and Bankruptcy Code, 2016 as against the respondent. Appellant is nonetheless entitled to canvass the issue of security under Section 9 of the Act of 1996. Arbitral Tribunal is yet to be constituted. Nothing has been placed before us to suggest that the present appeal is affected by moratorium under the Insolvency and Bankruptcy Code, 2016.

28. In view of the loan remaining unsecured to the extent of non creation of mortgage, the appellant makes out of prima facie case for grant of interim protection. The balance of convenience and inconvenience also lies in favour of the

appellant for grant of interim protection. Non grant of interim protection is likely to prejudice the appellant.

29. Creation of Debt Service Reserve in terms of Article 2.11 of the Rupee Term Loan Agreement, is an obligation of the respondent which is yet to be discharged.

30. In such circumstances, it would be appropriate to direct the respondent to create a Debt Service Reserve in term of Article 2.11 of the Rupee Term Loan Agreement within a fortnight from the date of requirement to do so by the appellant. Appellant is at liberty to apply for reliefs before the appropriate forum on the failure of the respondent to comply with the order.

31. APOT 89 of 2026 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

32. I agree.

[MD. SHABBAR RASHIDI, J.]