

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

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

A.P.COM No. 612 of 2025

M/s Electronica Finance Limited

vs.

Quality Offset Printers & Ors.

For the Petitioner	: Mr. Sakya Sen, Sr. Adv. Mr. Sayan Ganguly, Adv. Mr. Sormi Dutta, Adv. Mr. Sumeet Chowdhury, Adv.
For the Respondents	: Mr. Satadru Chakraborty, Sr. Adv. Mr. Bhaskar Dwivedi, Adv. Ms. Jyoti Rauth, Adv. Mr. Hareram Singh, Adv. Mr. Saptarshi Raja Chatterjee, Adv.
Reserved on	: 16.04. 2026
Judgment pronounced on	: 30.04.2026
Judgement uploaded on	: 30.04.2026

Shampa Sarkar, J.

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act"). The

application has been filed by the lender, which is a Non-Banking Financial Company. The petitioner is engaged in the business of asset finance and provides loan for assets, equipments and vehicles on lease, on hire purchase and hypothecation basis. The registered office of the petitioner is in Pune and the branch office is at 16, Strand Road, Diamond Heritage Building, 5th Floor, Room No. 525, P.S - Hare Street, Kolkata – 700001, which is within the ordinary original jurisdiction of this court.

2. It has been averred in the application that, the respondent no. 2 as the proprietor of the respondent no. 1 sometime in January 2023 approached the petitioner for a loan of Rs. 2,33,80,237/- for expansion of the business of the respondent no. 1. The respondent nos. 2 and 3 stood as guarantors of the said loan.

3. According to the case run by the lender/petitioner, all discussions and deliberations with regard to the said loan took place at the Branch Office at 16, Strand Road, Diamond Heritage Building, 5th Floor, Room No. 525, P.S - Hare Street, Kolkata – 700001. The petitioner agreed to provide a loan of Rs. 23380237/- and accordingly a Business Loan Agreement (hereinafter referred to as the said agreement) bearing number APPL00083793 dated January 31, 2023 was executed between the parties. It has been specifically averred that the agreement was signed, sealed and concluded by the petitioner at its Branch Office within the jurisdiction of this court. For the purpose of securing the loan, the respondents hypothecated a machine. The machine was installed in the premises of the respondent no. 1 at New Delhi. As per the terms and conditions of the agreement, the respondents were

required to repay the loan along with the applicable interest and other charges incidental thereto, in monthly instalments. The lender/petitioner claimed to have a first charge on the machine which was the secured asset. That apart, under the said agreement, the lender/petitioner also claimed the right to repossess the machine in the event of default committed by the respondents. Allegedly, the respondent no. 1 paid some of the instalments, namely, first to the thirteenth and thereafter failed and neglected to pay further instalments. The last payment made by the respondent no. 1 was for an amount of Rs. 5,74,621/- on May 5, 2025. On March 1, 2025, the petitioner had already issued demand notice to the respondents through a learned Advocate, demanding the outstanding dues with interest, amounting to Rs. 10,06,928 /-. The notice was issued from the office of the petitioner situated at 16, Strand Road, Diamond Heritage Building, 5th Floor, Room No. 525, P.S - Hare Street, Kolkata – 700001. The petitioner claimed to be also entitled to terminate the agreement upon occurrence of any breach or any default. When the notice dated March 1, 2025 went unheeded and the petitioner was aggrieved by the breach of obligations emanating from the said agreement, an application under Section 9 of the said Act being Misc. Case No. 2949 of 2025 was filed before the learned Chief Judge of the City Civil Court, Calcutta, inter alia, praying for appointment of a receiver in order to take possession of the secured asset. By an order dated April 25, 2025, the learned 13th Judge, City Civil Court, Calcutta, inter alia, was pleased to appoint a learned Advocate as the receiver for the purpose of taking over possession of the secured asset. The receiver failed to take

possession of the asset and accordingly filed a report. Being aggrieved by the order of the learned Judge, an appeal was preferred by the respondents being F.M.A.T (ARB) No. 26 of 2025, which was disposed of by the Division Bench, inter alia, remanding the matter to the learned 13th Judge, City Civil Court at Calcutta for further hearing.

4. In view of the failure of the respondents to make payments and on the allegation that the respondents had committed breach of the agreement, the lender was of the view that disputes had arisen between the parties which should be referable to arbitration in terms of the arbitration clause, incorporated in the said agreement. Accordingly, the petitioner issued a notice dated June, 17, 2025 under Section 21 of the said Act, thereby invoking the arbitration clause and calling upon the respondents for reference of the dispute to arbitration. The notice indicated that the claim of the petitioner on the date of issuance of the notice was Rs. 1,66,90,085/- and paragraph 16 of the application indicates that after deductions under various heads, the net outstanding on July 16, 2025 was Rs. 1,44,42,642/-. The petitioner proposed the names of three persons. The notice mentioned that a sum of Rs. 1,66,90,085/- had fallen due upon termination of the agreement. The notice was received by the respondents. The respondents did not react to the said notice.

5. Mr. Sakya Sen, Learned senior Advocate for the petitioner relied on clause 11.4 of the agreement which provided that disputes or differences arising between the parties with regard to the interpretation of the agreement or in connection with the agreement or any covenant or condition

thereto, as also dispute as regards the rights, duties and liabilities of any party thereunder and performance or non-performance of any of the said rights, liabilities would be referred to a sole arbitrator, to be appointed by the petitioner/lender in accordance with the provisions of the said Act and Rules framed thereunder. The language of the arbitration would be English. The cost of arbitration including the learned arbitrator's fees, advocates' fees, travelling cost and other miscellaneous costs would be borne equally by the parties. The venue of arbitration shall be Pune or such other place as the lender in its sole discretion may determine and the courts at Pune or such other place shall be exclusive jurisdiction.

6. According to Mr. Sen, the notice invoking arbitration clearly indicated that the lender had determined the venue of the arbitral proceeding and the jurisdiction of courts at Kolkata for all purpose and events. It was specifically provided that the juridical seat of arbitration shall be Kolkata, India. An option was given to the respondents to appear before the concerned tribunal through online or offline mode. The respondents were requested to expressly record in writing within seven days from the receipt of the invocation notice about any objection as to the choice of arbitrator, the venue and juridical seat, at Kolkata.

7. As no response was received from the respondents despite service of the notice invoking arbitration, the said application was filed.

8. Mr. Shatadru Chakraborty, learned senior Advocate appearing on behalf of the respondents raised a question of maintainability of the said application before this Court. The question raised by Mr. Chakraborty was,

whether the petitioner, at its own discretion, could unilaterally decide or shift the venue or seat from Pune to Kolkata and whether the selection of the venue at Kolkata could be imposed upon the respondents in the absence of any consent from the respondents. Such action was contrary to the doctrine of party autonomy.

9. According to Mr. Chakraborty, clause 11.4 of the said agreement had two parts. The first specified that, the venue would be either Pune or such other place that the lender may in the sole discretion determine and the second part provided that the courts in Pune or such other place that the lender may in its sole discretion determine, would have jurisdiction.

10. Mr. Chakraborty referred to Section 20 of the said Act which mandated party autonomy also on the choice of venue or seat. One of the parties to the dispute could not unilaterally lay down the terms and impose them on the other. The very expression "or such place that the lender may in its sole discretion determine" conferred upon the petitioner the unilateral discretion to choose or shift the venue of the arbitration without any approval or consent of the respondents. Such clause in the agreement was contrary to the principle of party autonomy and as such, unenforceable in law. He prayed for dismissal of the application, inter alia, on the ground that the clause was not only contrary to the provisions of Section 20 of the said Act, but also antithetic to Article 14 of the Constitution of India. Each and every party had an equal right not only of participation in the arbitral process, but also in the choice of arbitrators, the venue or seat and jurisdiction. The fact that the venue of arbitration shall be Pune and the

courts at Pune shall have jurisdiction was specifically provided for in the agreement. The parties had intended to anchor the arbitral proceedings to a particular place, i.e. Pune, thereby placing Pune as the seat of the arbitral proceedings. As seat was not mentioned, venue should be read as seat and as such, the second part of clause 11.4 that the lender/petitioner could also at its discretion choose a venue apart from Pune should be ignored as the same was redundant. He relied on ***B.G.S. Soma JV vs NHPC Limited*** reported in ***(2020) 4 SCC 234***.

11. He referred to the documents on record in order to substantiate that the respondents carried on their business in New Delhi. The machine or the secured asset was installed at New Delhi. The respondents signed the agreement at New Delhi and no part of the cause of action had arisen within Kolkata. The address of the respondents in the agreement was also that of New Delhi. He further referred to the Term Loan Cum Hypothecation Schedule- I to substantiate that the document was executed at Ghaziabad.

12. Reliance was placed on the following decisions in support of his contention that the lender could not unilaterally choose a venue and the second part of the clause should be ignored as it was contrary to law :-

- i. ***L & T Finance Ltd. vs. Manoj Pathak and Another*** reported in ***2020 SCC OnLine Bom 177***.
- ii. ***Cholamandalam Investment and Finance Company Limited vs. Uma Earth Mover and Another*** reported in ***2024 SCC OnLine Cal 1922***.

13. Heard the parties and considered their submissions. The specific averments in paragraph 1 and 3 of the petition indicates that the petitioner

has a Branch Office at 16, Strand Road, Diamond Heritage Building, 5th Floor, Room No. 525, P.S - Hare Street, Kolkata – 700001 and the petitioner signed, sealed and concluded the agreement within the jurisdiction of this court. The clause 11.4 of the said agreement provides, that the venue of the arbitration shall be either Pune or such other place that the lender may in its sole discretion determine and the courts at Pune or such other place would have exclusive jurisdiction. The argument of Mr. Chakraborty that Pune is the seat cannot be accepted as there is a contrary indication that the venue shall be either Pune or the lender may at its sole discretion determine the venue of arbitration and jurisdiction of the court in respect of disputes arising out of the subject agreement. This clause was agreed to by the parties meaning thereby, the respondents had agreed that the venue will be either Pune or the lender would have exclusive right to choose the venue and the jurisdiction of the court. The use of the expression “or such other place”, demonstrates a contrary indication, insofar as, the selection of venue is concerned. Secondly, the demand notice was issued from Kolkata by the lender through its advocate having its office at Kolkata. The notice of March 1, 2025 not only indicated the amount due but also indicated that on account of dishonour of cheques, an ECS proceeding under Section 138 of the Negotiable Instruments Act would be initiated. In the said notice it was clearly mentioned that for the purpose of settlement of the loan along with interest and pending charges, the respondents were required to contact the Branch Office. The last paragraph of the notice indicated that, as per the

agreement, the venue of arbitration shall be Pune or such other place the lender may in its sole discretion determine.

14. Accordingly, the respondents were informed that the venue of the arbitration shall be Kolkata and the courts at Kolkata would have jurisdiction in the matter. The relevant clause and the last paragraph of the notice dated March 1, 2025 are quoted below :-

“Please note that as per the said agreement the venue of Arbitration shall be Pune or such other place that the lender may in the sole discretion determine and courts in Pune or such other place shall have exclusive jurisdiction. Under the instruction of our client, we hereby intimate you that the venue of Arbitration shall be at Kolkata and therefore jurisdiction of the court is also confined to the Courts in, of and at Kolkata.”

15. The relevant clause in the notice dated June 17, 2025 is quoted below:-

“6. That we state that pursuant to our rights as per clause 11.4 to determine the venue of the arbitral proceedings and all other jurisdiction of Courts, we determine the same to be in Kolkata for all purposes and events.

7. That, pursuant to the above and with a view to ensure a fair and impartial process and to provide each party full opportunity to present its case, fairly and conveniently, we hereby propose following list of neutral Arbitrator for your perusal, for selecting an arbitrator of your choice from the given list along with the consent of the Guarantor/Co-Borrowers. For the purpose of convenience the Juridical Seat of Arbitration shall be at Kolkata, India. You may opt to appear before the concerned Arbitral Tribunal through online mode and/or offline mode. The Arbitral Award shall be final and binding upon the Parties.

<i>Sr. No.</i>	<i>Name</i>
1.	<i>Souma Bhattacharya (Advocate), 5, K.S. Roy Road, 3rd Floor, Kolkata – 700 001</i>
2.	<i>Avijit Ghoshal (Advocate), 7C, Kiran Sankar Roy Road, Hastings Chamber, Unit BL, Room No. – 12, Basement, Kolkata – 700 001.</i>
3.	<i>Joyjit Roy Choudhury (Advocate), Delta House, 4 Govt Place (N), 9th Floor, Room No. 918, Kolkata – 700 001</i>

8. Please note that a copy of this Notice will be served upon you through Postal Services as well as, through Hand Delivery, wherever possible and since it is mandatory to either accept or reject the above proposal of appointment of Arbitral Tribunal, you may expressly intimate us in writing within a period of 7 days from the date of receipt of this letter, about your objections and/or choice of arbitrator whose Judicial Seat shall be in Kolkata, India, IF any, failing which we shall proceed with proper actions as stated hereinabove and under. Needless to say that we shall be at liberty to appoint any of the abovementioned arbitrator for adjudication of the dispute arisen between us due to the non-payment of the outstanding amount without any further notice and communication in the event that we do not hear from you about your choice of Arbitral Tribunal/Arbitrator as stated hereinabove.”

16. The arbitration clause is quoted below:-

“11.4 ARBITRATION AND JURISDICTION

Any disputes or differences arising between the Parties hereto as to the interpretation of this Agreement or in connection with this Agreement or any covenants or conditions thereof or as to the rights, duties, or liabilities of any Party hereunder or as to any act, performance or non-performance of any act, deed or thing as agreed under this Agreement or matter or thing arising out of or relating to or under this Agreement (even though the Agreement may have been

terminated), the same shall be referred to a sole Arbitrator to be appointed by the Lender, according to the provisions of Arbitration and Conciliation Act 1996, and rules there under and any amendment thereto from time to time. The Language of arbitration shall be English. All cost of arbitration including the arbitrator's fees, advocate fees, travelling cost other miscellaneous expenses shall be borne equally by the Parties hereto. The award of the arbitrator shall be a speaking award and shall be final, conclusive and binding on all the Parties whether on question of law or of fact. In the event of death, refusal, negligence, inability, incapability of the persons so appointed to act as a sole arbitrator, a new arbitrator shall be appointed by the Lender. The venue of arbitration shall be Pune or such other place that the Lender may in the sole discretion determine and Courts in Pune or such other place, shall have exclusive jurisdiction. This Agreement shall be governed by and construed in all respects with Indian laws and the Parties hereto agree that any matter or issues arising hereunder or any disputes hereunder shall, at the discretion of the Lender be subject to the exclusive jurisdiction of the courts of the city of Pune or such other place as the Lender may deem fit. This shall not however limit the rights of the Lender to take proceedings in any other Court of competent jurisdictions.”

17. The respondents did not raise any objection with regard to the selection of the venue by the petitioner. Moreover, the petitioner approached the City Civil Court at Kolkata by filing an application under Section 9 of the said Act for interim protection and by order dated April 25, 2025, a learned Advocate was appointed as a receiver. The relevant portion of the order is quoted below :-

*“Accordingly, **Sonali Bag [Enrollment No. F/4335/2021, Mob No. 8585857762], Ld. Advocate and the Member of City Civil Court Bar Association**, be appointed as Receiver for the purpose of taking possession of **2 no. of machine being 1. HPM FULLY AUTOMATIC***

PROGRAMMABLE PAPER CUTTING MACHINE WITH ALL STANDARD ACCESSORIES SIZE: 115 CM MODEL : SQZK115 S 16, Manufacturer and Dealer being Sai Enterprises and 2. HEIDELBERG CD 102-5LX, FIVE COLOUR WITH COATER OFFSET PRINTING MACHINE SERIAL NO. 539388, Manufacturer being Heidelberg and Dealer being V.K. International (India).

The Receiver is authorized to take all necessary steps in accordance with law, including appointment of agent. The Police authority of the nearby Police Stations or the Superintendent of Police, under the jurisdiction of whom the machine in question is intercepted, would render assistance as is required lawfully by the Receiver, if at all necessary, who shall submit the Report before this Court.

So long the machine in question shall remain in the custody of the Receiver or her authorised agent and she shall remain responsible for any loss and damage, if any, caused to the said machine in question.

*The fee of the Receiver is fixed at **Rs. 6,000/-**.*

The Petitioner is directed to make payment to the Receiver directly and submit the receipt with the Court.

Issue writ accordingly on payment of the Receiver's fee.

The Petitioner is directed to submit papers by the next date fixed, showing that the Arbitration proceeding has commenced, in default, the above Order shall stand vacated.

Issue notice upon the Respondents, to show cause within 15 (fifteen) days from the date of receipt thereof.

Let a copy of this Order along with Writ be handed over to the Ld. Receiver for information and necessary compliance.

The Office is directed to acquire signature of the Ld. Receiver at the time of receiving the Writ and the Order sheet.

*Fix **25.08.2025** for S/R and submission of the report by the Receiver.*

Requisites at once. *Petitioner is given strict direction to comply with the order."*

18. The order dated April 25, 2025, was challenged by filing an appeal before the High Court at Calcutta bearing No. F.M.A.T (ARBAWARD) 26 of 2025. By consent of the parties, the appeal and the application were taken up together by the Division Bench. The Division Bench recorded the submissions of the respective parties and relegated the respondents to the learned City Civil Court, to ventilate all grievances. The order is quoted below :-

1. *By consent of the parties, the appeal and the connected application are taken up together for hearing.*
2. *This appeal is directed against an order dated April 25, 2025, passed by the learned 13th Bench, City Civil Court, Calcutta, on an application under Section 9 of the Arbitration and Conciliation Act, filed by the respondent herein being Misc. Case No. 2952 of 2025.*
3. *It appears that the appellant herein obtained financial accommodation in connection with a hire purchase agreement for purchase of certain equipment. Apparently, instalments fell in arrear. Accordingly, the respondent/finance company approached the learned Trial Court under Section 9 of the 1996 Act in view of there being an arbitration clause in the hire purchase agreement for resolution of disputes and differences between the parties.*
4. *The learned Trial Judge noting the submission made on behalf of the finance company that the appellant herein is trying to create third party interest in respect of the subject equipment/machines, appointed a learned advocate of the City Civil Court as receiver and passed the following direction :*

“The Receiver is authorized to take all necessary steps in accordance with law, including

appointment of agent. The Police authority of the nearby Police Stations or the Superintendent of Police, under the jurisdiction of whom the machines in question is intercepted, would render assistance as is required lawfully by the Receiver, if at all necessary, who shall submit the Report before this Court.

So long the machines in question shall remain in the custody of the Receiver or her authorized agent and she shall remain responsible for any loss and damage, if any, caused to the said machines in question.

The fee of the Receiver is fixed at Rs.6,000/-.

The Petitioner is directed to make payment to the Receiver directly and submit the receipt with the Court.

Issue writ accordingly on payment of the Receiver's fee.

The Petitioner is directed to submit papers by the next date fixed, showing that the Arbitration proceeding has commenced, in default, the above Order shall stand vacated.

Issue notice upon the Respondents, to show cause within 15 (fifteen) days from the date of receipt thereof.

Let a copy of this Order along with Writ be handed over to the Ld. Receiver for information and necessary compliance."

5. *Being aggrieved, the respondent in the Section 9 application is before us by way of this appeal.*

6. *Mr. Tiwari, learned advocate representing the appellant says that the receiver, with police force has taken actual physical possession of the concerned equipment which has*

stopped the appellant's business altogether. He also says that the receiver has taken possession of other machines which were not financed by the respondent. The finance company is in the process of selling the equipment/machinery of which possession has been taken by the receiver. This will cause irreparable prejudice to the appellant. Though there was some default in payment of instalment in the months of January and February, 2025, thereafter substantial sums have been paid by the appellant to the respondent.

7. Mr. Sen, learned senior counsel representing the respondent/finance company says that the receiver could not locate many of the equipment/machinery which she was directed to take possession of and the appellant extended no co-operation in that regard.

8. Submission made on behalf of the respective parties are disputed by the respective opposite parties.

9. We are of the view that the appellant should approach the learned Single Judge and ventilate his grievance. However, till the appellant gets such an opportunity, we direct the respondent not to sell or create third party interest in respect of the subject machinery/equipment. This interim protection granted to the appellant will continue for a period of one month from date and will be subject to any further order that may be passed by the learned Trial Court.

10. Likewise the appellant shall also not deal with or create third party interest in respect of the machinery and equipment which have been financed by the respondent company till further orders of the learned Trial Court.

11. If the appellant asks for a copy of the minutes of the meeting at which the receiver took possession of the concerned machinery, copy of such minutes will be forthwith supplied to the appellant.

12. *FMAT (ARBAWARD) 26 of 2025 is disposed of along with the application being I.A. No. CAN 1 of 2025.*

13. *Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.”*

19. From the order of the Division Bench, it is clear that all the parties accepted the jurisdiction of the City Civil Court. The fact that the City Civil Court was treated by the parties as the principal civil court under Section 2(1)(e) of the said Act attained finality, when the Division Bench, upon disposal of the appeal filed by the respondents, relegated the matter to the City Civil Court at Calcutta. Section 2(1)(e) is quoted below :-

“2. Definitions.—*(1) In this Part, unless the context otherwise requires,—*

[(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]”

20. The submissions of the learned Advocate for the respondents as recorded by Their Lordships, do not indicate that any question of jurisdiction was raised in the appeal, which means that the respondents did not have any objection with regard to the choice of venue of the arbitration being Kolkata and jurisdiction of the courts at Kolkata over the subject matter of the dispute. The notice invoking arbitration clearly mentioned in paragraphs 6, 7 and 8 that the lender had chosen Kolkata as the venue of the arbitral proceedings and the courts at Kolkata to have jurisdiction over the said agreement. In the factual matrix of this case, consent of the respondents to anchor the arbitral proceeding at Kolkata is available from the conduct. The issue of lack of jurisdiction was not raised in the appeal from the order of the City Civil Court. The appeal was disposed of with a direction upon the respondents to ventilate their grievances before the learned City Civil Court.

21. In such view of the matter, the decision of ***Cholamandalam Investment and Finance Company Limited*** (supra) will not be applicable. The application which was adjudicated upon by Her Lordship, had been filed under Section 9 of the said Act, seeking appointment of a receiver in respect of an asset which was financed by the petitioner. The question which fell for decision was whether, the High Court at Calcutta was the court as defined under Section 2(1)(e) of the said Act. The relevant clauses of the loan agreement which fell for decision before Her Lordship are quoted below :-

“29. Arbitration :

.....

The venue of arbitration proceedings shall be at Chennai or such place/location/city which the company at its discretion may decide from time to time.

30. Jurisdiction : Subject to the arbitration clause contained herein, the Courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement. However, the parties hereby agree, confirm and undertake that the Company has a right to file its claim in relation to any amount payable by the Borrower and or Guarantors or any other connect matter/s as mentioned in this Agreement in any other competent Court in India at its sole discretion.”

22. Under clause 29 above, a similar clause as in the subject agreement had been incorporated i.e. the venue of arbitration shall be at Chennai or such place/location/seat which the Company at its discretion may decide from time to time. Her Lordship was of the view that the lender could not unilaterally decide the venue of arbitration. The clause was arbitrary. Such decision was taken on the premise that the lender had approached the City Civil Court at Calcutta and then withdrawn the proceedings on the ground that the City Civil Court did not have any jurisdiction to entertain the matter. Thereafter, the lender approached the High Court on the self-same cause of action with the self-same reliefs as were before the City Civil Court. Her Lordship observed that venue must be chosen by both the parties.

23. In the case in hand, the lender exercised the option to choose the venue of arbitration as Kolkata with a further choice that the courts at Kolkata would be exclusive jurisdiction. This option / choice was informed to the respondents by the first notice of demand and also by the second

notice under Section 21 of the said Act. The paragraphs which have been quoted hereinabove clearly indicate that the petitioner had invited opinion of the respondents with regard to not only the choice of the arbitrators, but also choice of the venue and the jurisdiction of the court, but the respondents remained silent.

24. The petitioner approached the City Civil Court at Calcutta under Section 9 of the said Act treating the said court to be the principal civil court as defined under Section 2(1)(e) of the said Act. The respondents approached the High Court in appeal against the order appointing a Receiver. The High Court remanded the matter to the City Civil Court and the respondents accepted such order and went back to contest the matter before the City Civil Court. The order of the Division Bench of the High Court does not indicate, at all, that at any point of time, the respondents were aggrieved by the exercise of option on the part of the petitioner, treating the City Civil Court at Calcutta to have exclusive jurisdiction over the disputes arising out of the subject agreement.

25. The other decision cited by Mr. Chakraborty i.e. **LNT Finance Ltd.** (supra) also does not apply to the facts of the case inasmuch as, the High Court of Bombay came to the conclusion that unless there was a contrary indication, venue would be treated as seat. Paragraphs 24, 25 and 29 of the said decision are quoted below :-

“24. But this only answers the first portion of the argument. Mr. Rebello's construct proceeds on the footing that the whole of the selection of the seat (or venue=seat) provision is rendered bad because of the discretion impermissibly conferred on L&T Finance to choose some other place in its

sole discretion. That is not so. All that this means is that L&T Finance cannot pick any venue other than New Delhi, and that the stated venue, New Delhi, will be the seat (since there is nothing to indicate that it is a 'mere venue', a meeting place of convenience). Mr. Rebello may have been correct had the clause simply said the venue of the arbitration will be at such place as L&T Finance may in its sole discretion decide. That would have rendered the entire clause void, and then there would be no designated venue/seat at all. Instead, in its current form, the clause does name a venue. It does not say it is merely a venue or meeting place of convenience. This venue, New Delhi, is therefore the seat. It then goes on to give L&T Finance additional discretion to unilaterally select some other venue/seat. What is bad and would be unacceptable is L&T Finance exercising its choice to pick any other venue. This would not dislodge the consensus arrived at between the parties designating New Delhi as the chosen venue.

25. Once we see it like this, and once we have the settled law that in domestic arbitrations where a venue is specified it connotes the seat unless there is a specific indication to the contrary, then obviously no question of any other cause of action jurisdiction can survive for the purposes of selecting the competent Court.

29. There emerges the following trifecta of propositions in regard to a domestic arbitration:

(a) A stated venue is the seat of the arbitration unless there are clear indicators that the place named is a mere venue, a meeting place of convenience, and not the seat;

(b) Where there is an unqualified nomination of a seat (i.e. without specifying the place as a mere venue), it is courts where that seat is situated that would have exclusive jurisdiction; and

(c) It is only where no venue/seat is named (or where it is clear that the named place is merely a place of convenience for meetings) that any other consideration of jurisdiction may arise, such as cause of action."

26. In the present case, there is a contrary indication that the venue of arbitration would be either Pune or such other place as per the choice of the lender. This does not demonstrate consensus of the parties to anchor the arbitration proceedings exclusively at Pune. Moreover, the specific conduct of the respondents in the proceedings before the City Civil Court and the High Court would indicate that the choice of venue as Kolkata and the jurisdiction of the court at Kolkata, made by the lender had been accepted by the respondents and objection, if any, with regard to such option was waived. The respondents derogated from the provisions of Section 20 of the said Act in this particular case. The respondents, though called upon to convey their objections, if any, with regard to the choice of Kolkata as the venue and jurisdictional seat, did not raise any objection. No such objection with regard to the jurisdiction of the City civil court at Kolkata was urged in the appeal before the Division Bench.

27. Under such circumstances, the application is allowed. All other issues with regard to admissibility of the claim, quantification of the claim, limitation etc. are kept open, to be decided by the learned arbitrator.

28. Mr. Ishaan Saha, learned Advocate Bar Library Club, Mobile No. 9836011990 is appointed as the sole arbitrator to arbitrate upon the disputes between the parties. The learned arbitrator shall comply with the provisions of Section 12 of the said Act. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of the said Act.

29. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)