OCD- 21

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

AP-COM/730/2026
VARA INFROVATE PRIVATE LIMITED
VS
SREI EQUIPMENT FINANCE LIMITED

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

Appearance:-
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Tanay Agarwal, Adv.
Ms. SusreaMitra, Adv.
Ms. Payal Mishra, Adv.
...for petitioner.

Mr. Sakya Sen, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Saubhik Chowdhury, Adv.
Ms. Sayantani Banerjee, Adv.
Ms. S. Mallick, Adv.
...for respondent.

The Court: - The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole Arbitrator in respect of disputes arising out of Rupee Loan Agreement dated 19th March, 2020 bearing Agreement No. 187047.

Under the said agreement, the respondent, a non-banking financial company, sanctioned a term loan of Rs. 45 crores to the petitioner for a tenure of five years, with interest payable quarterly and the principal repayable on maturity. According to the petitioner, it had paid a sum of Rs. 45,12,69,854/- by 31st December, 2024, including Rs. 30 crores towards prepayment of principal, and continued to make further payments thereafter. It also sought extension of the loan tenure. The respondent issued a demand notice dated 10th June, 2025 claiming a sum of Rs. 14,48,58,909/-, and thereafter instituted C.P. (IB) No. 65/KB/2026 under Section 7 of the Insolvency and

Bankruptcy Code, 2016 before the learned National Company Law Tribunal, Kolkata Bench. In those proceedings, after giving credit for further payments, the respondent claimed an outstanding of about Rs. 8,50,92,040/-. The petitioner disputes the respondent's computation, including the levy of penal charges at 24% per annum as against the contractual rate, the levy and appropriation of overdue charges, the failure to give credit for TDS, the appropriation of payments, and the failure to adjust the sum of Rs. 1,84,90,323.84 paid under the Master Lease Agreement dated 26th July, 2016 against the loan account.

The petitioner invoked the arbitration agreement by notice dated 20th July, 2026. Despite receipt thereof, the respondent has not concurred in the appointment and the Arbitral Tribunal has not been constituted.

Heard learned counsel for the parties and perused the materials placed on record.

Clause 8.4.1 of the Rupee Term Loan Agreement, read with Clause 2.1 of the Arbitration Agreement dated 19th March, 2020, contains the arbitration agreement between the parties. The existence of the arbitration agreement is not in dispute. At this stage, the Court is required to undertake only a prima facie examination under Section 11(6A) of the Act.

The respondent received the notice invoking arbitration but did not concur in the appointment of an Arbitrator within the period contemplated under the Act. The agreed procedure for constitution of the Arbitral Tribunal has, therefore, failed, warranting the appointment of an independent and impartial Arbitrator by this Court.

By a separate order passed today in AP-COM/781/2026, this Court has referred the disputes arising out of the Master Lease Agreement dated 26th July, 2016 to arbitration. The petitioner's claim for adjustment of the sum of Rs. 1,84,90,323.84 against the loan account is common to both references. To avoid conflicting findings, it is appropriate that the same learned Arbitrator decide both references.

Accordingly, this Court appoints Justice I.P Mukerji (Retired) as a sole Arbitrator to adjudicate the disputes between the parties.

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 fix his remuneration in terms of the Fourth Schedule of the Act or as may be agreed between the parties.

The petitioner shall communicate this order to the learned Arbitrator for taking necessary steps within one week.

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 arbitrator, who shall decide the same in accordance with law.

With the aforesaid directions, both petitions are disposed of.

(GAURANG KANTH, J.)

R. D. Barua