

OCD 4

ORDER SHEET
AP-COM/962/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S ELECTRONICA FINANCE LIMITED
VS
KAJAL DINESHBHAI KHUNT AND ORS.

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

Appearance:
Ms. Sormi Dutta, Adv.
Mr. S. Chowdhury, Adv.
Mr. Sayan Ganguly, Adv.
Mr. S. Biswas, Adv.
. . .for the petitioner.

The Court:

1. Affidavit of service filed in Court is taken on record.
2. By the order dated February 3, 2026, this Court had directed that a notice be served upon the respondents along with the copy of the order dated February 3, 2026, indicating that the matter will be taken up on 26th February, 2026 and if the respondents failed to appear, the matter would proceed.
3. Such notice along with the copy of the order has been duly served.
None appears despite service.
4. The petitioner is a non-banking financial company. The petitioner prays for appointment of an Arbitrator to arbitrate upon the disputes arising

out of the term loan cum hypothecation agreement dated 1st January, 2022. The case run by the petitioner is that the respondents approached the petitioner for a loan, for the expansion of the business of the respondent no.1. The respondents nos. 2 and 3 agreed to stand as a guarantors. The petitioner agreed to provide loan for an amount of Rs.17,99,500/- and a Term Loan-cum-Hypothecation Agreement was entered into between the parties. For the purpose of securing the loan, the machines were hypothecated to the petitioner. The said machines were installed at the premises of the respondent no.1 at Rajkot, Gujarat. The loan was to be liquidated in 60 monthly instalments, but the respondent had paid the 1st to 27th instalment and thereafter failed to pay the remaining instalments. The last payment was made on May 5, 2024.

5. On March 7, 2025 the petitioner issued a demand notice to the respondents calling upon the respondents to pay up the remaining amount. The notice was issued from the office of the petitioner situated within the jurisdiction of this Court. The payment was to be received by the petitioner within the jurisdiction of this Court.
6. The petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Learned XIIIth Judge, City Civil Court at Calcutta for appointment of a Receiver to take possession of the machines. The Receiver was appointed. However, the Receiver could not find the machines at the address. The petitioners have a claim of more than Rs. 12 lakhs.

7. A notice invoking arbitration was issued on July 1, 2025 under Section 21 of the Arbitration and Conciliation Act, 1996. The loan was recalled and the agreement was terminated. The petitioner has specifically pleaded how this Court has jurisdiction to entertain the application.
8. The petitioner suggested names of three Arbitrators. The petitioner also indicated that the place of arbitration shall be Kolkata. By the said letter, the petitioner also invited objections, if any, from the respondents with regard to the choice of Arbitrator and the venue. Clause 11.4 of the said agreement contains an Arbitration Clause. In this case, venue cannot be read as a seat because there is a contrary indication that the lender could also choose another venue for the purpose of holding the arbitration.
9. The 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, of 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.”

10. Part of the cause of action took place within Kolkata, as pleaded in several paragraphs of this application.
11. There is sufficient indication that the exclusivity of Pune as the venue has been taken away by a further choice granted to the lender to choose any other venue at its sole discretion. Thus, the venue cannot be read as a seat and Pune cannot have exclusive jurisdiction to entertain the application to appoint an arbitrator. The lender also has an option to select the courts which would have overall jurisdiction. Moreover, no objections were raised with regard to selection of venue. The respondents waived such opportunity to object to the venue chosen by the lender.
12. Under such circumstances, this Court allows the application by appointing Mr. Shubrojyoti Mookherjee, learned Advocate, member of the Bar Library Club, as the learned Arbitrator, to adjudicate the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
13. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.

14. All objections with regard to jurisdiction, arbitrability, admissibility and limitation etc, are left open.
15. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

SP/