OCD- 23

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/672/2026
TATA CAPITAL LIMITED
VS
ASHOK BARIK AND ANR.

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 14th October, 2026.

Appearance:-
Mr. Dwaipayan Banerjee, Adv.
Mr. Aharnish Ghosh, Adv.
...for petitioner.

The Court: - Affidavit of service is taken on record. Despite service, none appears on behalf of the respondents.

The petitioner has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a learned Sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties out of the Loan Agreement being no. TCFCV0547000011788335 dated 21st December, 2022.

The petitioner is a Non-Banking Financial Company having its registered office at Mumbai and regional office at Salt Lake, Kolkata. It is the case of the petitioner that it had sanctioned a loan of Rs.48,46,181/- to the respondent for expansion of his business. The respondent initially made payment of certain instalments but thereafter committed defaults in repayment of the said loan.

The petitioner consequently issued demand-cum-recall notice dated 28th May, 2026, calling upon the respondent to pay the outstanding amount of Rs.23,11,283/- as on 16th April, 2026. The said notice also invoked the arbitration agreement contained in the loan agreement which constitutes a notice under Section 21 of the Arbitration and Conciliation Act, 1996. Despite receipt of the said notice, the respondent neither cleared the outstanding dues nor took any steps for constitution of the Arbitral Tribunal. More than 30 days have elapsed from the receipt of the notice under Section 21.

Clause 13 of the loan agreement contains the arbitration clause. The said clause provides that any dispute, difference or claim arising between the parties in connection with the facility or the alleged breach thereof, would be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The said agreement further provides that the seat of arbitration shall be Kolkata and the Courts at Kolkata will have the jurisdiction.

Prima facie, the arbitration clause and the execution of the loan agreement are not in dispute. The invocation of the arbitration agreement by the petitioner is also not in dispute in terms of issuance of the notice under Section 21 of the Act. The existence of a valid arbitration agreement, the invocation thereof by the petitioner and the failure of the respondent to act upon the arbitration notice satisfy the conditions for exercise of jurisdiction under Section 11(6) of the Act stand satisfied.

It is now well settled principle of law that the jurisdiction of the court under section 11 of the Arbitration and Conciliation Act, 1996 is confined to a *prima facie* examination of the existence and validity of the arbitration agreement.

As per section 11(6A) of the Act *"the Supreme Court or as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall notwithstanding any judgment decree or order of any court, confine to the examination of the existence of an arbitration agreement."*

Accordingly, this Court appoints Mr. Falguni Bandyopadhyay, Advocate (Mob. No. 6289983013) as the learned 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 be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act or as may be mutually agreed between the parties.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned Sole Arbitrator, who shall decide the same in accordance with law.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

R. D. Barua