OCD- 22

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/781/2026

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 the Master Lease Agreement dated 26th July, 2016 and the lease schedule executed thereunder.

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.

The dispute principally concerned the petitioner's claim for refund/adjustment of amount paid towards the lease agreement together with its other claims arising out of the said agreement. The petitioner invoked the arbitration agreement by issuing a notice dated 21st August, 2026. Despite receipt thereof, the Arbitral Tribunal has not been constituted.In view thereof, the Petitioner approached this Court for the appointment of a sole arbitrator for adjudicating the disputes between the parties.

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

Clause 18(n) of the Master Lease Agreement contains an arbitration clause. The said clause provides for the appointment of a sole Arbitrator by the lessor. Such unilateral appointment is impermissible in view of the decision of the Hon'ble Supreme Court in***Perkins Eastman Architects DPC &Anr. Vs***

HSCC (India) Ltd. reported as ***(2020) 20 SCC 760*** and ***Central Organization for Railway Electrification Vs. M/s. ECI-SPIC-SMO-MCML (JV)***, reported as ***2024 SCC OnLine SC 3219***. The agreed procedure for appointment therefore cannot be given effect to.

The existence of the arbitration agreement is not in dispute by either of the parties.

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, at the stage of exercising jurisdiction under Section 11 of this Act, this Court is only required to examine the existence of a valid arbitration agreement containing an arbitration clause.

Since, there is no dispute w.r.t the arbitration agreement, with the consent of the parties, 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