

AP/341/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONM/S. URGO CAPITAL LTD.
VERSUS
DHRUV CABLES AND CONTRACTORS AND ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 29TH JULY, 2022

APPEARANCE:

Mr. Rohit Banerjee, Advocate
Ms. Shrayashee Das, Advocate
... for the petitioner.

The Court:- The fresh affidavit of service filed by the counsel for the applicant is taken on record.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the Master Facility Agreement dated 30th March 2019 was executed between the parties which contained the following arbitration clause:-

“23. GOVERNANCE LAW AND ARBITRATION

- (a) *Any and all disputes, claims differences arising out of or in connection with any Facility Agreement or the performance of any Facility Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the Lender and the award thereupon shall be binding upon the Parties. The place of the arbitration shall be in Kolkata and the arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The proceeding of Arbitration tribunal shall be conducted in English language. Each Party shall bear costs of representing its case before the Arbitrator. Costs and charges of Arbitrator shall be shared equally unless otherwise provided for in the award.*
- (b) *The Borrower(s) further agree that all claims, differences and disputes, arising out of or in relation to dealings/transaction made in pursuant*

to any Facility Agreement including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Kolkata only.

- (c) Nothing contained in this Clause 23, shall limit any right of the Lender, to take proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not and the Borrower and irrevocably submits to and accept, generally and unconditionally, the jurisdiction of such courts and tribunals.*
- (d) The Borrower(s) hereby consents generally in respect of any proceedings arising out of or in connection with any of the Facility Agreement to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.”*

Learned counsel has also pointed out that the loan recall notice dated 29th October 2021 was duly served upon the respondent and thereafter, invoking the arbitration clause, in terms of Section 21 of the Act, notice dated 22nd March 2022 was served, but no response was received.

Before this Court also, in spite of service of notice, no one is present on behalf of the respondents to dispute the above contention of the counsel for the applicant or the plea taken in the application under Section 11 of the Act. Hence, the arbitration agreement, the recall notice and the notice under Section 21 of the Act have remained uncontested.

In the aforesaid circumstances of the case, I am of the opinion that a case for allowing the prayer for appointment of sole independent arbitrator to resolve the dispute between the parties is made out.

Accordingly, Mr. Saptansu Basu, Senior Advocate (M No.9830087914) of this Court is appointed as sole arbitrator, subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)

sm/s.kumar