

Present: Sri Partha Pratim Chakravorty (J.O. Code: WB01277)
Title Suit No. 2391 of 2025

Order No. 06
Dated 04.08.2026

Defendant filed hazira along with Vakalatnama. Defendant also filed a petition under Section 5 & 8 of the Arbitration and Conciliation Act, 1996.

Plaintiff filed extension petition in respect of the ad-interim order of injunction along with copy of payment receipts.

Record is taken up for hearing of application under Section 5 & 8 (1) of the Arbitration and Conciliation Act, 1996.

Learned Advocate appearing for the defendant submits that the dispute squarely falls within the scope and ambit of the arbitration clause contained in the agreement duly executed between the parties. It is submitted that a copy of the agreement duly certified and attested by a Notary Public has been produced before this Court, which fully meets and satisfies the requirement of Section 8(2) of the Arbitration and Conciliation Act, 1996. Learned Advocate further highlights that the plaintiff, after obtaining the loan, slept over their rights and went into a deep slumber, failing to file any written objection or agitate any valid grounds, and that any defects in the agreement pointed out by the plaintiff are nothing but minor typographical errors with no glaring or fatal infirmity. In support of the application, reliance is placed on the binding precedent of the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* [(2003) 6 SCC 503], wherein it was laid down that where an arbitration clause exists, the court has a mandatory duty under Section 8 to refer the matter to arbitration. Reliance is heavily placed upon the ratio and point of view of the Hon'ble High Court at Calcutta in C.O. No. 3689 of 2015 (*Prosenjit Biswas v. Tata Motors Finance Ltd.*), wherein the Hon'ble High Court explicitly held that a copy of the loan agreement duly attested by a Notary Public is sufficient to fulfill the statutory requirements of Section 8(2) of the Arbitration and Conciliation Act, 1996, and consequently, upon producing such a notarized copy, the judicial authority is bound to refer the

parties to arbitration. Learned Advocate also refers to decisions including *State of Orissa v. Klockner and Co.* [(1996) 8 SCC 377] to emphasize the imperative nature of Section 8.

Learned Advocate for the plaintiff opposes the prayer, contending that the agreement suffers from defects, that the copy provided was not proper, and that the application ought not to be allowed.

Such a stand taken by the plaintiffs gets tainted by the adoption of dilatory tactics from his end to put a bridle on the progress of the suit so far as the adjudication of the application challenging the jurisdictional capacity of this learned court is concerned. To be more candid, I would like to observe that the application under reference was brought out from the end of the defendants on 19.02.2026 and during this entire interregnum, the plaintiff did not exercise his right to file a written objection to the same controverting the averments of the defendant in the same. It is needless to mention here that the learned advocate for the plaintiff received the copy of the application on the date of filing. On the last occasion, being the date preceding this date, an issue was ventilated from the end of the plaintiff that a complete copy of the loan agreement attached with the application under Section 5 and 8 of the Arbitration Act was not supplied to the plaintiff, which precluded the filing of the written objection. Since the last date and today, when I am beseeched with the task of adjudicating this application, the plaintiff attempts through his learned advocate to draw my notice to the fact that a copy of the complete agreement has not been served by the defendant. On a meticulous perusal of the contents of the agreement, which becomes necessary in the light of the submissions advanced from the end of the plaintiff, it is discovered that there is no infirmity in the agreement, and whatever discrepancy has cropped up relates not to the integral components of the agreement, but connects to the mistake of a wrong pagination of the said document. Some more incongruities attached to the agreement were tried to be pointed out from the end of the plaintiff, but it is fortuitous to note that the

plaintiff did not take the pain to ventilate these facts through a pleading. Such a lacadaisical attitude of the plaintiff debars him from the entitlement of any scope to be granted at this juncture for filing the written objection. Non-diligent and non-vigilant litigants cannot be blessed with the assistance of law to grant reliefs on such stale and time-barred claims, and I draw inspiration to make such an observation from a judgment of a Constitutional Bench of the Supreme Court of India in *Senior Divisional Manager, Life Insurance Corporation of India & Ors. v. L. Life Insurance Corporation of India*.

Upon perusal of the record, the pleadings, and the loan agreement, this Court finds that the plaintiff availed the loan, accepted the financial assistance, and made payments pursuant to the agreement. Having accepted the benefits under the agreement, the plaintiff cannot be allowed to approbate and reprobate at the same time by seeking to disown the arbitration clause contained therein. The doctrine against approbation and reprobation is well settled by the Hon'ble Supreme Court in *Union of India v. N. Murugesan* [(2022) 2 SCC 25], holding that a party cannot enjoy the fruits of a transaction and simultaneously repudiate its onerous covenants.

Furthermore, the record reveals that despite opportunities granted under Order VIII Rule 2 and Order VIII Rule 4, the plaintiff failed to show any substantive bar against the arbitration clause. The notarized copy of the loan agreement filed on record sufficiently satisfies the mandate of Section 8(2) of the Act in light of the principles laid down in C.O. No. 3689 of 2015. The alleged defects in the agreement are merely typographical and non-fatal. Once the existence of a valid arbitration agreement is demonstrated and the application is filed before submitting the first statement on the substance of the dispute, Section 8 of the Arbitration and Conciliation Act, 1996 imposes an obligatory duty upon the judicial authority to refer the parties to arbitration, in line with the bar on judicial intervention under Section 5 of the Act.

From the case record I find that an application under Section 5 & 8 (1) of the Arbitration and Conciliation Act, 1996 has been filed from the end of the defendant on an earlier occasion. As the said application, relates to an issue which touches the jurisdictional scope of the Learned Court to adjudicate the instant suit, so the said issue needs to be taken up for consideration before the Learned Court can step an inch forward in the process of dealing with the other interlocutory applications connected with the instant suit. So I devote myself in the adjudication of the application under Section 5 & 8(1) of the Arbitration and Conciliation Act, 1996 prior to putting in the exercise of adjudicating the other applications. Before I initiate the process of adjudication of the application under reference, a bounden duty befalls on me to catch a glimpse of the provisions couched in Section 5 & 8 (1) of the concerned statute.

A plain reading of the provisions envisaged in Section 5 reveal in a distinctive manner the extent of judicial intervention in matters pertaining to the issues of conflict coming under the domain of the provisions of the special enactment. No ambiguity has crept in anywhere in the four corners of the Section which express with clarity the legislative intent that if squabble comes to light springing out from an agreement which prescribes the dispute arising out of which to be adjudicated through arbitration, then the Learned Civil Court will restrain to intervene for deciding the said dispute. The ambit of application of the provisions of Section 5 of the Act in question was discussed in elucidated in articulate by the Hon'ble Supreme Court in a case reported in (2003) 5 SCC 531.

Section 8(1) of the Act which the applicant being the defendant herein has attempted to bring into operation so as to seek an order of referral of the subject matter of the instant suit for arbitration enumerates with its provisions that when a judicial authority before which an action is brought in a matter being the subject of an arbitration agreement and in the eventuality of such a fact being propounded by the party interested in the projection of the same prior

to the submission of the first statement connected with the substance of the dispute, the said judicial authority needs to refer the parties to arbitration. To be precise and candid the enactment of Section 8 is propelled by the objective of the legislature to make arbitration agreements effective by fixing a forum for adjudication of the dispute arising out of such agreement so as to restrain and discourage the parties to the dispute being the signatories to the agreement from knocking the doors of the Learned Civil Court for the redressal of the grievances which is stipulated to be done through arbitration. The legislative intent succinctly gets evident from the texture of the said Section. On this score I would like to refer to a decision of the Hon'ble High Court at Madras reported in (2001) 3 Arb LR 352 (Mad). But there is a condition which is contemplated to be fulfilled so as to arrest the scope of the judicial forum to indulge itself into the act of adjudicating the dispute apart from sending the same to arbitration and the said condition relates to the time and the moment when the existence of the arbitration agreement being the edifice of the conflict between the parties is being projected before the judicial authority by the interested party. The moment or time is postulated as that preceding the submission of the first statement by the party concerned on the substance of the dispute. The terminology "First Statement on the substance of the dispute" differs from the pleading referred to as the written statement. The difference was incontrovertibly elucidated by the Hon'ble Supreme Court in a decision reported in (2006) 7 SCC 275 wherein the Hon'ble Court observed "written statement is different from the first statement on the substance of the dispute and it is a matter of interpretation whether the first statement of substance amounts to submission to the jurisdiction of the judicial authority as is done by filing of written statement.

The sole requirement which needs to be fulfilled for the judicial authority to refer the dispute for arbitration springs out from the existence of the arbitration agreement between the parties to the dispute. The concept of

arbitration agreement is couched Section 7 of the Act, the essential elements of a clause of Arbitration in the agreement which exudes the rights and obligations of the signatories to the said agreement was neatly elucidated by the Hon'ble Supreme Court in a decision reported in (2003) 3 RAJ1 (SC) and the Hon'ble Court observed "the fundamental elements of an arbitration agreement can be connoted as hereunder:

- (i) There must be a present or future difference in connection with some contemplated affair.
- (ii) There must be a clear intention of the parties to resolve such difference through arbitration.
- (iii) The intention of the parties is also expressive to be bound by the decision being the final outcome of the arbitration process."

Arbitration clause in a contract holds the nature of an arbitration agreement. An arbitration agreement may exist either in entirety or it may be incorporated in the document of contract as an arbitration clause. This was observed by the Hon'ble Supreme Court in a case reported in (1998) 1 Arb. LR 296.

In the present case the agreement which is enclosed along with the application under Section 5 & 8(1) of the Arbitration and Conciliation Act as picturises clause 22 as the "arbitration clause". On a perusal of a contents of the said clause, it is evident that the same is embossed with the recital that all disputes, differences and / or claim arising out of or in connection with this agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue of the arbitration proceedings has been neatly described in the said clause of the agreement. It is an admitted position that both the borrower and the lender being the plaintiff and the defendant herein are the signatory to the said agreement. It is not the case of the plaintiff that he had some reservation on the admissibility and an authenticity of any content of the

said agreement. Nowhere from the four corners of the plaint, I find that there is any averment that the agreement which has given the plaintiff a cause of action to initiate the present suit is bereft of any arbitration clause. The concealment of the said fact by the plaintiff and on subsequent disclosure of the same by the defendant contrives a situation where from it can be deduced that the genesis of clause 22 of the agreement being the arbitration clause is not subjected to or rather afflicted by any challenge from the end of the plaintiff. It will not be a misnomer to surmise that the plaintiff has accrued the right to seek the relief of a declaration that he is the owner of vehicle in question with the consequential the relief to restrain the defendant from disturbing his possession of the said vehicle only on the platform created and sketched out by the said agreement. The presence of the arbitration clause in the agreement on the basis of which the loan was sanctioned and disbursed in favour of the petitioner works as a tool or rather a mechanism to get the dispute if any arising from the said agreement between the parties to be resolved through arbitration. The provisions of Section 5 read with Section 8(1) of the Arbitration and Conciliation Act envisaged an alternative mechanism for resolution of the dispute arising between the parties to the agreement and there cannot be any departure to the same. I derived strength to make such an observation from some judicial pronouncement. At first, I would like to refer to a decision of the Hon'ble Supreme Court in the case of Rastriya Ispat Nigam Ltd Vs. Verma Transport as reported in (2006) 7 SCC 275 wherein the Hon'ble Court observed "Section 8 of the Arbitration and Conciliation Act, 1996 is peremptory in nature and the Court is under obligation to refer the parties to arbitration". In another case reported in (2004) 1 ICC 492 SC the Hon'ble Apex Court observed "If in an agreement between the parties before the Courts there is a clause for arbitration, it is mandatory for the Civil Court to refer the said dispute to arbitration". These judicial authorities and the statutory provisions succinctly indicate the jurisdictional inability of the Learned Civil Court to undertake the

exercise of adjudication of a dispute evolving from the agreement containing a clause for arbitration.

By applying the legal proposition to the facts and circumstance that hold primal relevance to the instant case, I am constrained to surmise that there is no other alternative or option to the Learned Court but to refer the dispute for arbitration.

Hence, I drop the veil of my discussion by drawing the conclusion that the application under Section 5 & 8 (1) of the Arbitration and Conciliation Act, 1996 filed from the end of the defendant is entitled to be brought within the zone of consideration.

Accordingly the said application preferred by the defendant stands allowed. The parties are granted liberty to resolve their dispute through arbitration as per the terms and condition inscribed in the agreement, specially the arbitration clause.

However, in the light of the golden principle enunciated by the Hon'ble Supreme Court in a plethora of cases that the corpus of the litigation needs to be preserved from any collateral damage and an decay, the interim order dated 31.10.2025 shall continue to run in favour of the petitioner till the parties reached the corridors of arbitration.

In view of such order passed above, the instant suit loses its strength and vitality to subsist and is thus dropped.

D/c by me:

Sd/-
Judge, Bench-X

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Judge, Bench-X
City Civil Court, Calcutta