

OCD -26

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/269/2025
SREI EQUIPMENT FINANCE LIMITED
VS
BENITA INDUSTRIES LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 23rd April, 2025.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Avishek Guha, Adv.

Sk. Shariful Haque, Adv.

Mr. Ankush Majumder, Adv.

Mr. Adipta Kr. Pandit, Adv.

.... for the petitioner

Mr. Sirsanya Bandopadhyay, Adv.

Mr. Soham Kumar Roy, Adv.

Mr. Rahul Kumar Singh, Adv.

...for the respondents.

The Court: This is an application filed by the finance company for an order of injunction, restraining the respondents and/or their respective men, servants and agents from alienating and/or dealing with and/or disposing of the hypothecated assets under the Loan Cum Hypothecation Agreement dated September 15, 2017, bearing no. 140840. Further prayer is made for appointment of a receiver over the assets described in the schedule of the said agreement. It is submitted that, despite this Court having disposed of an earlier

application for injunction filed by the borrowers with a direction for payment of a minimum amount out of the total dues, such order has not been complied with. It is also submitted that till 21st April, 2025, the respondents did not bother to take steps to communicate the order of appointment of the learned Arbitrator to the Hon'ble Judge (retired), who was appointed as the learned arbitrator. The appointment was made by order dated 27th February, 2025. Hence, the finance company, having no other alternative and apprehending that the assets will be depleted or alienated, prays for some interim protection. Accordingly, the prayer for injunction is being made along with a prayer for appointment of a Receiver.

Mr. Bandopadhyay, learned advocate for the respondent submits that the prayer for interim measure can be made before the learned arbitrator. Learned arbitrator has been approached by the petitioner.

In my opinion, a prima facie, case for injunction and appointment of a Receiver has been made out by the finance company. The respondents had approached this Court under Section 9 of the Arbitration and Conciliation Act with a prayer to restrain the respondents from proceeding under the Insolvency and Bankruptcy Code, 2016 on the basis of the demand notice and other notices issued under the Code. This Court was of the view that a, prima facie, case of default had been established by the petitioner and a blanket injunction, restraining the borrowers from taking recourse to the provisions of law, could

not be passed. The Court also held that the machines could be repossessed in accordance with the terms of the agreement. However, upon weighing the balance of convenience and inconvenience and upon taking note of the fact that the machine was being used to run the business of the respondent, the Court had fixed a schedule of payment, thereby directing payment of Rs. 5 lakhs in two equal monthly instalments. First of such instalment was directed to be paid within March 5, 2025 and the other within April 5, 2025. Upon compliance of the said payment schedule this Court had enjoined the petitioner from taking any coercive measures against the respondents. The Court also directed that, in case of default, the petitioner would be entitled to take steps as permitted in law. Such liberty having been granted and default having been committed by the petitioner, this application has been filed. This Court is of the, prima facie, view that a strong case has been made out for interim measures and protection to the lender.

Under such circumstances, there shall be an order of injunction on the asset being Air Compressor, Dumper, Excavator, Tipper and Tower till 16th May, 2025 restraining the respondent from alienating or transferring the same. The same may be used in the usual course of business. An opportunity to make the payment as directed by order dated February 5, 2025 is granted upto May 16, 2025. If such payment is made, the injunction will stand automatically vacated. The Court appoints Mr. Gautam Mukherjee, learned

advocate (M. 9830348249) as the Receiver, to take possession of the asset after 16th May, 2025, in default of payment of the money as has been directed by this Court in the order dated February 5, 2025.

It is made clear that if the payment is not made within 16th May, 2025, learned Receiver will take possession and file a report before the Court when the matter will appear on 20th May, 2025 at 1 P.M.

An official of the petitioner shall accompany Mr. Mukherjee for identification of the asset. The Receiver shall be entitled to a remuneration of Rs. 50,000/- apart from travelling costs and other miscellaneous costs, which shall be paid in advance to Mr. Mukherjee.

The Officer-in-Charge of the concerned Police Station within whose jurisdiction the assets are situated, shall render all necessary assistance to the learned receiver for taking possession of the asset.

However, this order shall not prevent the parties from negotiating and settling the matter, and for the learned Arbitrator to take steps.

(SHAMPA SARKAR, J.)