

Tata Capital Limited vs M/S Goyal General Store & Anr. on 26 March, 2025

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 44/2025

Date of Deci

IN THE MATTER OF:

TATA CAPITAL LIMITED

Through: Mr. Savyasachi K. Sahai
Vishvajeet Singh Singha
Aman Singhania and Mr.
Bagchi, Advs.

versus

M/S GOYAL GENERAL STORE & ANR.

Through: None

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator to adjudicate upon the dispute(s) in terms of clause 12 of the Loan-cum-Guarantee Agreement dated 07.07.2023.

2. The petitioner has filed affidavit of service which is as under:-

1. That I have been appointed as the advocate for the Petitioner in the present matter. I am fully conversant with the facts and circumstances of the present case on the basis of the records maintained by the Petitioner and am as such competent to swear to the present affidavit.

2. That the present affidavit is being filed in pursuance of the Order dated 09.01.2025 by which this Hon'ble Court was pleased to issue notice to the Digitally Signed By:PRIYA Digitally Signed Signing Date:04.04.2025 By:PURUSHAINDRA 15:19:46 KUMAR KAURAV Respondents in the present matter through all permissible modes.

3. That in compliance of the said Order dated 09.01.2025, the Respondents were served the notice of the present proceedings through Email, WhatsApp and Speed Post Heard learned counsel appearing

on behalf of the parties.

4. That the following email address of the Respondents' is available as per the records of the Petitioner;

(i) lovekeshgoyal97@gmail.com

5. It is stated that service of the notice of the present proceedings on the above-mentioned email address of the Respondents was effected through the email id of my associate i.e., aman@sahaico.in. It is submitted that the said email dated 01.02.2025 was delivered to the aforesaid email id and has not bounced back. True copy of the email dated 01.02.2025 has been annexed herewith as Document-1.

6. That the following phone numbers with an active WhatsApp account of the Respondents are available as per the records of the Petitioner;-

- (i) Account No. 1: +91 76961 00450
- (ii) Account No.2: +91 98726 18103

7. It is stated that the service of the notice of the present proceedings on the WhatsApp accounts available on the above-mentioned numbers of the Respondents was effected through my office on 01.02.2025. I state that a copy of the summon issued by the Hon'ble Court and the Petition filed in the present matter have been delivered to the above-mentioned WhatsApp account of the Respondents. True copy of the service through WhatsApp dated 01.02.2025 on the aforesaid WhatsApp Account No. 1 of the Respondents has been annexed herewith as Document - 2. True copy of the service through WhatsApp dated 01.02.2025 on the aforesaid WhatsApp Account No. 2 of Respondent No. 1 has been annexed herewith as Document- 3.

8. That the Respondents were also served the notice of the present proceedings through speed post(s) dated 01.02.2025 on the following addresses of the Respondents available as per the records of the Petitioner:

MOHALLA GURUNANAKPURA, OPPOSITE POST OFFICE, SAHNEW AL ROAD,
KIMA T RAI, DEHLON, LUDHIANA, PUNJAB -141 118 DEHLON, LUDHIANA,
PUNJAB -141 118 True copy of the speed post receipts dated 01.02.2025 have been
annexed herewith as Document- 4 (Colly.).

9. That the tracking report of the speed post dated 01.02.2025 sent to the Digitally Signed By:PRIYA Digitally Signed Signing Date:04.04.2025 By:PURUSHAINDRA 15:19:46 KUMAR KAURAV above address of Respondent No.1 indicates that the speed could not be delivered to the addressee with the remarks "Items Returned Refused". True copy of the tracking report of the speed post sent to the address of Respondent No. 1 has been annexed herewith as Document -5.

10. That the tracking report of the speed post dated 01.02.2025 sent to the above address of Respondent No. 2 indicates that the speed could not be delivered to the addressee with the remarks

"Item Returned Refused". True copy of the tracking report of the speed post sent to the address of Respondent No. 2 has been annexed herewith as Document-6.

11. That the annexures are true correct of the respective originals.

12. That the contents of the above affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom"

3. At this juncture, reference can be drawn to the case of Lease Plan India (P) Ltd. v. Rudraksh Pharma Distributor¹ wherein, this Court permitted the service of the petition by e-mail and WhatsApp. The Court held as follows:-

"7. It is nonetheless clear that the respondents have been duly served by email and WhatsApp. It may be noted that the email address and the mobile number of the respondents is mentioned in the Agreement itself [at page Nos. 35, 37, 40 and 43 of the petition]. The affidavit of service dated 28.03.2024, affirmed by the authorised representative/legal counsel of the petitioner - company, demonstrates service by both these modes.

8. Although service by email and WhatsApp is sufficient, it may also be noted that in the Agreement itself, the address of the respondent for the purposes of correspondence, provided in Clause 10.3, is the address at which service has been attempted. The notice invoking arbitration sent to the same address was reported to have been delivered, but in the Speed Post report, by which the petition was sent to the address, it is stated that no such person is available at the address."

4. In view of the aforesaid and the affidavit of service filed on behalf of the petitioner, along with the steps taken to serve the notice via email and dasti both, the Court is satisfied that the service has been duly completed.

5. Accordingly, this Court is left with no option but to proceed ex parte Digitally Signed By:PRIYA Digitally Signed Signing Date:04.04.2025 By:PURUSHAINDRA 15:19:46 KUMAR KAURAV against respondents. Ordered accordingly.

6. A perusal of the petition indicates that respondent No.1, through its Sole Proprietor, availed a loan facility of Rs.45,00,000/- from the petitioner, and respondent No.2 stood as a personal guarantor to respondent No.1. The said loan amount was disbursed in terms of the Master Loan Agreement dated 07.07.2023, incorporating various terms and conditions governing the transaction. It is the case of the petitioner that respondent No.1 defaulted in the repayment of the loan amount, whereupon, the petitioner issued a notice dated 27.11.2024 under Section 21 of the Arbitration and Conciliation Act, 1996, invoking the arbitration clause and seeking amicable settlement of the disputes. The petitioner claims that, as on date, the respondents are jointly and severally liable to pay an outstanding amount of Rs.43,37,617/-, along with pendente lite and future interest.

7. The Court takes note of the Arbitration Clause 12 of the Loan-cum- Guarantee Agreement dated 07.07.2023., which reads as under:-

"12. Arbitration:

If any dispute, difference or claim arises between any of the Obligor and the Lender in connection with the Facility or as to the interpretation; validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other Party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years' relevant experience. The Respondent shall either.

2024 SCC OnLine Del 2687 Digitally Signed By:PRIYA Digitally Signed Signing Date:04.04.2025
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(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ("Notice Period"); or"

(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties. In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s."

8. It is evident that where there exists an arbitration clause, and in event if any dispute arises between the parties, then there should be no impediment in appointing an independent Sole Arbitrator for adjudicating the same. In this regard, reference can be made to the following judgments of the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Ltd.,² TRF Limited v. Energo Engineering Projects Ltd.,³ Bharat Broadband Network Limited v. United Telecoms Limited,⁴ and Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re 5.

9. In view of the fact that disputes have arisen, and there is an arbitration clause in the appointment letter, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes.

(2020) 20 SCC 760

(2017) 8 SCC 377

2019 SCC OnLine SC 547

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10. Accordingly, Ms.Nishtha Jain, (Mobile No: +91-9599290860 and email ID nishthaj798@gmail.com) is appointed as the sole Arbitrator.

11. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

12. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the 1996 Act within a week of entering on reference.

13. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

14. All rights and contentions of the parties in relation to the claims/counter-claims or to file an appropriate application for deletion of respondent No.2 are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law. Needless to state, the Court has not expressed any view/opinion of the merits of the case.

15. The petition stands disposed of in the aforesaid terms.

PURUSHAINDRA KUMAR KAURAV, J MARCH 26, 2025/DPA/SP Click here to check corrigendum, if any 2023 SCC OnLine SC 1666.

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