

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

G.A. (COM) No. 1 of 2025

With

G.A. (COM) No. 2 of 2025

In

C.S. (COM) No. 55 of 2025

Sunita Gupta and Ors.

Versus

M/s. UGRO Capital Limited and Ors.

Mr. Chayan Gupta

Mr. Tanay Agarwal

Mr. Shivam Bhimsaria

Ms. Akansha Singhania

... For the plaintiffs.

Mr. Swatarup Baneerjee

Mr. Paritosh Sinha

Mr. K.K. Pandey

Mr. Zeeshan Haque

Ms. Pooja Sett

Ms. Sonia Nandy

Ms. Mallika Bothra

... For the defendant no.1.

Hearing Concluded On : 08.08.2025

Judgment on : 11.09.2025

Krishna Rao, J.:

1. The plaintiffs have filed an application being G.A. (Com) No. 1 of 2025 praying for interim order. The defendants have filed an application being G.A. (Com) No. 2 of 2025 praying for referring the parties to arbitration.
2. The plaintiff no. 3 is one of the sons of Bhagat Ram Gupta (deceased) and the plaintiff no.2 is the wife of the plaintiff no.3 and the plaintiff no. 1 is the wife of one of the brothers of Bhagat Ram Gupta (deceased). Bhagat Ram Gupta (deceased) had three sons and all the three sons were looking after their separate businesses. The plaintiff no. 3 along with his wife, the plaintiff no. 2 had shifted their businesses to Hyderabad and while the plaintiff no. 1 is residing at Ghaziabad and they are involved in various businesses at Hyderabad. There is no stake or involvement of the plaintiffs in the defendant no.3.
3. Mr. Chayan Gupta, Learned Counsel appearing for the plaintiffs submits that though the plaintiffs have shifted their respective businesses at Hyderabad and Ghaziabad, the personal accounts of the plaintiffs were filed from Bhubaneswar, as it had always been done in the past, by the office of the defendant no.3. In view of the relationship

between the plaintiffs and the defendant no.3, the defendant no.3 would coordinate with the plaintiffs for all filing process and for maintenance of their personal accounts.

4. Mr. Gupta submits that on 29th December, 2023, the plaintiffs were served with an application under Section 9 of the Arbitration and Conciliation Act, 1996 being A.P. (Com) No. 39 of 2023. On receipt of the said application, the plaintiffs came to know that the defendant no.1 had rendered a loan or any financial assistance of Rs. 2,00,00,000/- to the defendant no.3 and the plaintiffs are co-applicants or co-borrowers of the purported loan.
5. Mr. Gupta submits that the purported loan agreement dated 25th July, 2023, contained the purported digital signatures of the plaintiffs. He submits that the plaintiffs have never signed any agreement for loan. The plaintiffs through recollection of memory came to know/ realise that on several occasions when the plaintiffs have been asked by the defendant no.3 for providing a One Time Password (OTP) for the use of digital signature, which would be generated by the defendant no.3, for filing and signing various documents for the petitioners, the defendant no.3 used such digital signature of the plaintiffs on the alleged loan agreement dated 25th July, 2023.
6. Mr. Gupta submits that no consent from the plaintiffs was obtained by any of the defendants prior to utilizing the digital signatures of the plaintiffs on the alleged agreement. He submits that the defendant no.1

and its officers have committed fraud by creating fabricated documents dated 25th July, 2023. He submits that the alleged agreement is illegal and void. He submits that in reply filed by the defendant no.1 in A.P. (Com) No. 39 of 2023 reveals that the entire loan has been adjusted or repaid. Despite such being the position, the defendant no.1 is purporting to pursue the defendant no.3 and the plaintiffs for repayment.

7. Mr. Gupta submits that the plaintiffs have no privity with the alleged transaction and are not bound by the alleged document dated 25th July, 2023. He submits that the defendant nos.1 and 2 have illegally, arbitrarily and malafidely published the names of the plaintiffs as defaulters and this would negatively impact on the credit scores of the plaintiffs.
8. Mr. Gupta submits that the parties cannot be referred to arbitration and the plaintiffs are not the parties to the agreement and the signatures appearing in the agreement are not in any capacity. He further submits that the plaintiffs have filed the suit for cancellation and declaration of the agreement as null and void and the arbitrator cannot declare the agreement as null and void.
9. Mr. Gupta further submits that one of the principal reliefs claimed by the plaintiffs in the suit is a direction on CIBIL not to take any steps on the basis of the false reporting made by the defendant no.1 and CIBIL is not a party to the agreement.

- 10.** Mr. Gupta submits that the agreement is only between two parties i.e. 'lender' being the defendant no.1 and the 'borrower' being the defendant no.3. Nowhere, in the said agreement, the names of the plaintiffs appear in any capacity to make them as party to the arbitration agreement. He submits that merely because the signatures of the plaintiffs were obtained by the defendant no.1 by perpetrating fraud, the plaintiffs cannot be said to be 'parties' to the agreement.
- 11.** Mr. Swatarup Banerjee, Learned Counsel representing the defendant no.1 submits that after detailed verification and credit analysis of the defendant no.3, the defendant no.1 sanctioned a loan facility to the defendant no. 3 on 25th July, 2023, which was accepted by all the parties. The facility agreement was also signed by all the parties including the plaintiffs. The defendant no.3 was the primary applicants to the facility agreement and the plaintiffs and others are the co-applicants of the loan agreement. Through the facility agreement dated 25th July, 2023, the defendant no.1 has extended a credit facility of Rs. 2,00,00,000/- and all the parties have executed the agreement by affixing digital signatures.
- 12.** Mr. Banerjee submits that the agreement contains arbitration clause and all the parties to the suit except CIBIL are the parties to the agreement. He submits that the plaintiffs instead of invoking the provisions of the arbitration clause in the agreement have filed the suit before this Court by making CIBIL a party to the suit only to avoid arbitration.

- 13.** Mr. Banerjee submits that with respect to the claims between the plaintiffs and the defendants, CIBIL is not a necessary party and the plaintiffs have not prayed for any relief against CIBIL.
- 14.** Mr. Banerjee submits that the borrowers failed to repay tranches of credit facilities granted against the invoice dated 31st July, 2023 and have committed default under the facility agreement due to which the defendant no.1 recalled the loan and called upon the borrowers to repay the amount which had fallen due.
- 15.** Mr. Banerjee submits that the defendant no.1 had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 for grant of interim order against the borrowers but in the said application, the defendant no.3 has filed an affidavit stating that an amount of Rs. 2,00,00,000/- in terms of the invoice dated 31st July, 2023, had already been paid. Taking into consideration the Hon'ble Court dismissed the application filed by the defendant no.1. He submits that from the affidavit of the defendant no.3 itself reveals that an amount of Rs. 99,44,000/- is still remains unpaid.
- 16.** Mr. Banerjee submits that the allegations of fraud, which has been stated in the plaint clearly demonstrates that the plaintiffs do not dispute the agreement per se being invalid or not in existence but alleges that the plaintiff's digital signatures have been obtained by fraud. He submits that the validity and existence of the agreement is not in dispute.

17. Mr. Banerjee submits that as the agreement contains arbitration clause and the parties are required to be referred to arbitration, thus no interim order can be passed as prayed for by the plaintiffs.

18. The plaintiffs have filed the suit praying for the following reliefs:

“(a) The said purported document dated 25th July 2023 be adjudged null, void and not binding upon the plaintiffs;

(b) Alternatively, the purported document dated 25th July, 2023 be adjudged to be voidable and duly avoided by the plaintiffs;

(c) Decree for delivery up and cancellation of the purported document dated 25th July, 2023;

(d) Alternatively to prayers (a), (b) and (c) above, declaration that the purported agreement dated 25th July, 2023 has stood discharged by accord and satisfaction;

(e) Perpetual injunction restraining the defendants from disseminating any information to any third party that the plaintiffs are alleged defaulters or from intimating to the defendant no.2 that the plaintiffs are defaulters;

(f) Mandatory injunction be issued upon the defendant no.2 to forthwith remove the plaintiffs’ names as defaulters of any loan of the defendant no.1;

(g) Receiver;

(h) Injunction;

(i) Attachment;

(j) Costs;

(k) Such further and/or other relief or reliefs.”

19. The document which the plaintiffs pray for declaring as null and void is the Facility Agreement dated 25th July, 2023. Clause 15 of the said agreement reads as follows:

“15. GOVERNING LAW, JURISDICTION AND ARBITRATION

15.1 *This Agreement shall be construed in accordance with the laws of India and subject to the arbitration clause below, shall be subject to the exclusive jurisdiction of the competent courts situated in Kolkata.*

15.2 *In the event of any dispute of difference between the parties under this Agreement, including in relation to the construction or interpretation of this Agreement or as to the rights, duties, liabilities of the Parties arising out of this Agreement, the dispute or difference shall be resolved through arbitration, which shall be administered by an institution recognized by the government of India for dispute resolution, such institution will appoint the arbitrator for conducting the arbitration proceedings in accordance with its rules for conduct of arbitration proceedings under the Arbitration and Conciliation Act, 1996 as may be amended from time to time. The arbitration proceedings shall be conducted preferably through online means or otherwise through conventional means in English language. The arbitral award shall be final and binding on the Parties. The seat and venue of arbitration (if conducted through conventional means) shall be at Kolkata.*

15.3 *The award given by the arbitrator shall be final and binding on the Parties to this Agreement. The cost of the arbitration shall be borne with by the Party/Parties, in accordance with the award passed by the arbitrator.”*

- 20.** The contention raised by the plaintiffs that the plaintiffs have not executed any agreement but the defendant no.3 misused the OTP provided by the plaintiffs and used the digital signatures of the plaintiffs in the said agreement without the consent of the plaintiffs. The defendant no.1 had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996. In the said proceeding, the

plaintiffs were also made as party respondent. In the affidavit filed by the defendant no.3 in the said proceeding, it had disclosed documents showing that the defendant no.3 had deposited the principal amount of Rs. 2,00,00,000/-. In the said case also, the plaintiffs have taken stand that the signatures appearing in the said documents were obtained without the consent of the plaintiffs and the plaintiffs are not the beneficiaries of the loan amount.

21. In the Sanction letter dated 25th July, 2023, the name of the plaintiffs is appearing as co-applicant nos. 3, 4 and 5. In the schedule of term the name of principal borrower is recorded as Vedanta Limited and in column 14, the details for notice and communication, the names of the defendant no.3 along with the plaintiffs are also mentioned.
22. Mr. Gupta relied upon the judgment in the case of ***Vingro Developers Pvt. Ltd. Vs. Nitya Shree Developers Pvt. Ltd. through its Principal Officer and Others*** reported in ***2024 SCC OnLine Del 486*** and submitted that the defendant no.3 is the principal borrower and the plaintiffs were not the beneficiaries of the said loan and the signatures were not obtained in the document with the consent of the plaintiffs thus, the plaintiffs cannot be referred to arbitration.
23. Mr. Banerjee relied upon the judgment in the case of ***Avitel Post Studioz Limited and Others Vs. HSBC PI Holdings (Mauritius) Limited*** reported in ***(2021) 4 SCC 713*** and submits that the only allegation of fraud which has been raised by the plaintiffs is that the

defendants without the consent of the plaintiffs have obtained digital signatures in the document. The plaintiffs have not initiated any criminal case against any of the defendants for committing an offence for forgery. Mr. Banerjee relied upon the guidelines for usage of digital signatures in e-Governance wherein in question no.11, it is stated that:

“Q11. Is it possible for someone to use your Digital Signature without your knowledge?”

It depends upon the how the signer has kept his private key. If private key is not stored securely, then it can be misused without the knowledge of the owner. As per the IT Act, 2000, the owner of the private key will be held responsible in the Court of Law for any electronic transactions undertaken using his/her PKI credentials (public/private keys).”

24. In the case of ***Avitel Post Studioz Limited and Others (supra)***, the Hon’ble Supreme Court held that:

“24. Chandrachud, J., in a separate judgment, referred to the judgment in *N. Radhakrishnan* and then held :

“40. The above extract from the judgment in N. Radhakrishnan relies extensively on the view propounded in Abdul Kadir. The decision in Abdul Kadir arose under the Arbitration Act, 1940 and was in the context of the provisions of Section 20. In Abdul Kadir, this Court emphasised that sub-section (4) of Section 20 of the Arbitration Act, 1940 left a wide discretion in the court. In contrast, the scheme of the 1996 Act has made a radical departure from the position under the erstwhile enactment. A marked distinction is made in Section 8 where no option has been left to the judicial authority but to refer parties to arbitration. Abdul Kadir explains the position

under the Arbitration Act, 1940. The present legislation on the subject embodies a conscious departure which is intended to strengthen the efficacy of arbitration.

43. Hence, the allegations of criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.”

25. *Chandrachud, J. then cautioned against the use of N. Radhakrishnan case as a precedent, and distinguished it as follows:*

“45. The position that emerges both before and after the decision in N. Radhakrishnan is that successive decisions of this Court have given effect to the binding precept incorporated in Section 8. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration. The judgment in N. Radhakrishnan has, however, been utilised by parties seeking a convenient ruse to avoid arbitration to raise a defence of fraud:

45.1. First and foremost, it is necessary to emphasise that the judgment in N. Radhakrishnan does not subscribe to the broad proposition that a mere allegation of fraud is ground enough not to compel parties to abide by their agreement to refer disputes to arbitration. More often than not, a bogey of fraud is set forth if only to plead that the dispute cannot be arbitrated upon. To allow such a plea would be a plain misreading of the judgment in N. Radhakrishnan. As I have noted earlier, that was a case where the appellant who had filed an application under

Section 8 faced with a suit on a dispute in partnership had raised serious issues of criminal wrongdoing, misappropriation of funds and malpractice on the part of the respondent. It was in this background that this Court accepted the submission of the defendant that the arbitrator would not be competent to deal with matters 'which involved an elaborate production of evidence to establish the claims relating to fraud and criminal misappropriation'. Hence, it is necessary to emphasise that as a matter of first principle, this Court has not held that a mere allegation of fraud will exclude arbitrability. The burden must lie heavily on a party which avoids compliance with the obligation assumed by it to submit disputes to arbitration to establish the dispute is not arbitrable under the law for the time being in force. In each such case where an objection on the ground of fraud and criminal wrongdoing is raised, it is for the judicial authority to carefully sift through the materials for the purpose of determining whether the defence is merely a pretext to avoid arbitration. It is only where there is a serious issue of fraud involving criminal wrongdoing that the exception to arbitrability carved out in N. Radhakrishnan may come into existence.

45.2. Allegations of fraud are not alien to ordinary civil courts. Generations of Judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. The parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. The parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies

designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed.”

- 25.** The plaintiffs have only taken the ground of fraud that the defendant no.3 has misused the OTP provided by the plaintiffs and the said OTP was used for digital signatures of the plaintiffs and the plaintiffs had never consented for the said signatures. The defendant no.3 is not denying the agreement. The defendant no.3 has paid an amount of Rs. 2,00,00,000/- during pendency of the application under Section 9 of the Arbitration and Conciliation Act, 1996. The agreement and other documents contained digital signatures of the plaintiffs. The stand taken by the plaintiffs that the defendants have frequently and without the consent of the plaintiffs obtained the digital signatures of the plaintiffs and the plaintiffs are not the beneficiaries of the loan can be raised before the arbitrator. As regard that the CIBIL is not the party to the agreement but the plaintiffs have made the CIBIL as the defendant no.2 in the present suit, this Court finds that the only claim made by the plaintiffs against the CIBIL is for removing the name of the plaintiffs as defaulters of any loan of the defendant no. 1. If the plaintiffs succeed in the arbitration proceeding, automatically, the plaintiffs can request the CIBIL for removal of their name as defaulters of the loan of the defendant no.1. This Court finds that the plea raised by the plaintiffs in the present suit, the same can be agitated before the Arbitrator. This

Court also finds that the plaintiffs have not initiated any criminal proceeding on the allegation of fraud against the defendants.

26. Considering the above, this Court finds that the disputes raised by the plaintiffs are duly covered under Clause 15.2 of the Facility Agreement. Thus the parties to the suit are referred to arbitration for adjudication of dispute in terms of Clause 15.2 of the Facility Agreement dated 25th July, 2023.

27. G.A. (Com) No. 2 of 2025 is allowed. G.A. (Com) No. 1 of 2025 along with C.S. (Com) No. 55 of 2025 are accordingly dismissed.

(Krishna Rao, J.)