

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
AP/271/2020

USHA LUBES PRIVATE LIMITED
VERSUS
LINGARAJ DAS

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 15th December, 2020.

Appearance:
Mr. Anand Prasad Agarwalla, Adv.
Mr. Mohit Gupta, Adv.

... for the petitioner.

The Court: This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short "the Act of 1996") for appointment of an Arbitrator to adjudicate the disputes arisen between the parties relating to the dealership agreement dated April 8, 2015, being Annexure 'A' to the petition (hereinafter referred to as "the dealership agreement"). Clause 13 of the said dealership agreement contemplated that all disputes arising between the parties thereto shall be adjudicated through arbitration under the Act of 1996.

According to the petitioner, that in spite of delivery of the goods in terms of the dealership agreement, the respondent has failed, neglected and refused to pay Rs.47,37,247/- to the petitioner. Thus, a dispute has arisen between the parties under the said dealership agreement. By a notice dated February 13, 2020 addressed to the respondent, the petitioner invoked the arbitration agreement contained in Clause 13 of the dealership agreement and called upon the respondent to agree to the

appointment of the person named by the petitioner as the sole Arbitrator to adjudicate the disputes between the parties. In spite of receipt of the said notice dated February 13, 2020 the respondent has not replied to the same. Thus, the petitioner has filed the present application seeking the relief mentioned above.

From the affidavit-of-service filed by the petitioner it appears that a copy of the application has been served upon the respondent. However, on December 8, 2020, when the application was taken up for hearing the respondent remained unrepresented. Accordingly, hearing of this application was adjourned till December 10, 2020 and the petitioner was directed to communicate the order dated December 8, 2020 to the respondent by electronic mail. In the said order dated December 8, 2020, this Court clarified that if the respondent remains unrepresented on the next date of hearing, this application may be disposed of in his absence. From the affidavit-of-service filed by the petitioner it appears that the petitioner has informed the respondent of the said order dated December 8, 2020. However, today the respondent once again remains unrepresented. Accordingly, the application is taken up for hearing in the absence of the respondent.

In the present case, the existence of the said dealership agreement containing the arbitration agreement between the parties is not in dispute. By the said notice dated February 13, 2020, the petitioner invoked the arbitration agreement and called upon the respondent to agree to the person nominated by it to act as the

sole arbitrator. The respondent, however, did not reply to the said notice dated February 13, 2020. Thus, the petitioner has substantiated the ground for appointment of the Arbitrator by this Court under Section 11 of the Act of 1996.

For the reasons as aforesaid, the application, AP No.271 of 2020, succeeds. Mr. Amitabha Ghosh, Advocate of Bar Library Club (First Floor) is appointed as the sole Arbitrator to adjudicate the disputes arising between the parties relating to the said dealership agreement dated April 8, 2015, being Annexure-"A" to the petition. The Arbitrator shall be free to fix his fees as per Schedule IV to the Act of 1996, which shall be borne by the parties in equal shares. The Arbitrator will be entitled to engage secretarial staff, whose remuneration shall also be borne by the parties in equal shares.

The petitioner shall forthwith communicate this order to the respondent by speed post with A/D as well as the electronic mail.

With the above directions, AP No.271 of 2020 stands disposed of.

Urgent certified website copies of this order be made available to the parties, if applied for, upon compliance with all requisite formalities.

(ASHIS KUMAR CHAKRABORTY, J.)

mg/akg