

ORDER SHEET

OD-7

AP No. 121 of 2019
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SOFIA ZUBAIR alias SUFIA ZUBAIR
VERSUS
MUSTAFA JAMAL & ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date: 18th March, 2021.

(Via Video Conference)

Appearance:
Mr. Chayan Gupta, Adv.

The Court :- The petitioner seeks appointment of an arbitrator under Section 11[6] of the Arbitration and Conciliation Act, 1996.

Learned Advocate appearing for the petitioner submits that, the petitioner entered into a partnership with the respondents. The partnership was reconstituted from time to time. Ultimately, the reconstitution was made on December 14, 2016. The first party in the deed of partnership dated December 14, 2016 expired and he is survived by the respondent nos. 13 and 14. He draws the attention of the Court to the notice under Section 21 of the Act of 1996. He submits that, in response thereto, although the respondents did not deny the existence of the arbitration agreement, they did not agree to the arbitrator named by the petitioner.

None appears for the respondents.

In the facts of the present case, the parties entered into a deed of partnership on June 5, 2013. On the death of one of the partners governed by the deed of partnership dated June 5, 2013, the partners entered into the amended deed of partnership dated December 14, 2016. The deed of partnership dated June 5, 2013 contains an arbitration clause which is as follows:-

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25. That the disputes and differences in connection with the partnership or interpretations of this Deed arising between the partners or between any one of them and the legal representatives of other or between their respective legal representatives and whether during the continuation of and/or after the termination of this partnership shall be referred to arbitration according to the provisions of the Arbitration in terms of the Arbitration and Conciliation Act, 1996.

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The amended deed of partnership dated December 14, 2016 stipulates in clause 5 that, all other clauses, provisions and stipulations as envisaged in the partnership agreement dated June 5, 2013 shall remain unchanged and unaltered. It provides in clause 6 that the amended deed of partnership dated December 14, 2016 shall become an appendage to, and form an integral part and parcel of the partnership agreement dated June 5, 2013 and shall be read along to construe the true meaning and purport thereof.

In response to the notice under Section 21 of the Act of 1996 the respondents did not deny the existence of the arbitration agreement.

In such circumstances, disputes and differences remaining outstanding between the partners of the partnership firm, it would be appropriate to appoint an arbitrator in terms of the arbitration agreement between the parties.

Mr. Rupak Ghosh, Advocate, Bar Library Club, is appointed as Arbitrator in terms of the agreement contained in the partnership agreement dated June 5, 2013 read with the amended deed of partnership dated December 14, 2016. The learned Arbitrator is at liberty to fix his own remuneration. The parties will pay the remuneration of the learned arbitrator, in accordance with their ratio in the partnership. The parties will bear their costs and expenses of the arbitration again in accordance with their ratio in the partnership.

The parties are at liberty to inform the learned Arbitrator of this order.

AP No. 121 of 2019 is disposed of accordingly.

(DEBANGSU BASAK, J.)