

IN THE HIGH COURT AT CALCUTTA
(Original Side)

A.P. No. 412 of 2020
(Through Video Conferencing)

SRI HIMSEKHAR DUTTA

....Petitioner(s)

Through : Mr. Amritam Mondal,
Mr. Debasish Mukhopadhyay,
Ms. Sahili dey,
Ms. Jeenia Rudra, Advocates

v/s

SMT. MOUMITA SARKAR

....Respondent(s)

Through : (None)

Coram : HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

O R D E R

1. This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointing an independent arbitrator to resolve the disputes between the parties.

2. In spite of service of affidavit of this application no one has appeared on behalf of the respondent to oppose the application. The affidavit of service indicates that the respondent has been served and this fact has been duly taken note of in the earlier proceedings dated 5th of January, 2021.

3. The case of the applicant in nutshell is that the applicant and the respondent had entered into a deed of partnership on 15th February, 2018 to carry

out the business in the name and style “MARUTI COMMOTRADE”. The allegation of the applicant is that the respondent had withdrawn the amount from the bank account of the partnership firm from time to time but had not repaid it and had misappropriated the money of the partnership firm. It is also alleged that the wife of the applicant had given huge amount to the account of the firm but the same is not returned. The dispute is about the settlement of accounts and share of profit of the partnership firm.

4. The partnership deed dated 15th February, 2018 contains the following arbitration clause:

“35. That in the event of any dispute, on differences of opinion in the matter of interpretation, execution of carrying out the objects and functions of the enterprise arbitrators shall be appointed and the arbitrators appointed shall amongst themselves appoint an umpire. The decision of the arbitrators would be binding on the parties to the disputes. In the event of any difference amongst them the decision of the umpire would be final and binding upon all concerned. Prior to seeking recourse to arbitration bonafide efforts should be carried out by the partners and whomsoever concerned to effect conciliation.”

5. In terms of the aforesaid arbitration clause and keeping in view the dispute between the parties, the applicant had sent the letters dated 12.06.2020 and 26.06.2020 through the lawyer in terms of Section 21 of the Act but they remained unanswered. The applicant had received the legal notice through the advocate issued on 31.10.2020 containing certain terms which the petitioner had duly replied through his lawyer on 18.11.2020 which was duly served. In that reply also a request was made to appoint an arbitrator. When the needful was not done by the respondent the present application has been filed.

6. The respondent has not chosen to appear and oppose this application. Hence, on the basis of the averment made therein it is clear that there is arbitration

agreement between the parties and the dispute exists which is required to be resolved by appointment of an independent arbitrator.

7. Hence, Mr. Debasish Roy, Advocate, resident of 40B, Charu Chandra Avenue, Tollygunge, Kolkata – 700033, (Mob. No. 9831173923) is appointed as arbitrator to settle the dispute between the parties. The arbitrator shall be at liberty to fix his remuneration to be shared equally between the parties.

8. The application is also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

KOLKATA
09.11.2021
PA(SS)