

ORDER SHEET  
AP/325/2021  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL DIVISION

INDORAMA INDIA PRIVATE LIMITED  
VS  
NITAI BHOWMIK

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date: 1<sup>st</sup> March, 2023.

*Appearance:*  
*Mr. Aniruddha Mitra, Adv.*  
*Mr. Sayan Ganguly, Adv.*  
*Ms. Khusboo Choudhary, Adv.*  
*...for the petitioner*

*Mr. Apratim Bhattacharya, Adv.*  
*...for the respondent*

The Court:

1. The present petition has been filed under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'). The petitioner company, Indorama India Private Limited, is engaged in the business of inter-alia manufacture, imports, exports, distribution and agency of agro chemical products. The respondent, Mr. Nitin Bhowmik, a sole proprietor, carrying on business under the name and style of 'Arati Fertilizer', is engaged in selling of fertilizers, pesticide seeds and agricultural equipment. A dealership agreement was entered into between the petitioner and respondent on June 1, 2018 (hereinafter referred to as the 'dealership agreement') of which clauses 22.3 and 22.4 contain the arbitration clause.
2. The petitioner avers that as per the requests of the respondent it would timely supply and the respondent accept various quantities and qualities of fertilizers amounting to Rs. 3,75,95,257.95. The respondent had made part

payments of Rs. 3,50,01,237.28 and an amount of Rs. 25,94,020.67 was due and payable by respondent to the petitioner. Petitioner alleges that despite several requests, payment of the outstanding balance was not being done by the respondents. The petitioner alleges that the respondent, through several letters dated between December 8, 2019 and January 21, 2020, started making frivolous, misconceived claims and wild allegations against the petitioner. The respondent also alleged that the 110 MT DAP ('Di-Ammonium Phosphate') purchased by the respondent is lying with the petitioners.

3. The petitioner in its replies to respondent's letters denied the contentions, statements and allegations. The respondent in a letter dated February 10, 2020, made certain allegations against the petitioner, in reply to which the petitioner denied all the statements and demanded Rs. 25,94,019.73, which was due to be paid. On March 19, 2020, the respondents wrote another letter to the petitioner making allegations pertaining to delivery of full quantity of DAP to the representative of the respondent. The petitioner in letter dated June 24, 2020 denied such allegations and demanded the sum of Rs. 25,94,020 along-with interest at the rate of 18% per annum, mentioning that if the respondent fails to clear petitioner's dues, it would have no option but to use cheques presented by the respondent. The petitioner also mentioned that the invoices of physical delivery of 370 MT DAP had been generated on the Integrated Fertilizer Management System (IFMS- an IT enabled system and specially developed and controlled by Government which captures end to end movement of fertilizer).
4. The petitioner hereafter through a letter dated November 12, 2020 terminated the dealership agreement. It was also mentioned in the same notice that the parties tried to resolve the dispute upon consultation but the respondents kept silent and the disputes could not be resolved. Petitioner avers that it was mentioned in the same letter that disputes be resolved in accordance with the terms of Clause 22.3 of the Agreement. Thereafter, the representative of the petitioner approached the respondent through email

dated December 4, 2020, for coming down to Kolkata for discussions, which happened on December 10, 2020. However, the disputes could not be resolved.

5. The petitioner alleges that despite having full knowledge of the dealership agreement and the arbitration clause therein, the respondent went ahead with a Commercial Suit before Hon'ble Judge, Commercial Court, West Tripura, Agartala, praying for the following relief:

*Pass a decree for payment of money amounting to Rs. 39,40,000/- in favour of the plaintiff and against defendant with an interest of 12% per annum from 8<sup>th</sup> December, 2019 when the demand for 110 tones of DAP was firstly made by the plaintiff till date of payment.*

6. The respondent alleges that post his signing the dealership agreement at Agartala, the petitioner has not equipped him with a copy of the same till date despite repeated requests. The respondent alleges that post execution of the dealership agreement, the petitioner company started raising different invoice in his name for different types of items which the respondent would pick from the custody of buffer handling agent and sell out in the market. The petitioner was sending fertilizers which the respondent was not in need of.
7. Upon a perusal of the facts of the case, I find that the existence of the arbitration clause cannot be doubted. While the respondents claim that they did not receive a copy of the dealership agreement, the conduct of the parties proceeded on the basis of the said agreement. The suit at the Commercial Court, West Tripura, Agartala, is not an impediment to instituting arbitration proceedings in light of a crystal clear arbitration clause. The scope of examination is confined only to the existence of the arbitration agreement at this stage. In ***Duro Felguera S.A. vs Gangavaram Port Limited (2017) 9 SCC 729***, the Supreme Court held that the intention of the legislature is evident from reading Section 11(6-A) of the Act, that the

court should and need only look into one aspect, which is the existence of an arbitration agreement.

8. Accordingly, I appoint Ms. Radhika Singh, Advocate (Mobile No.9831090675) as the sole arbitrator to resolve the dispute between the parties. The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.
9. Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.
10. In light of the above, the petition (being A.P. 325/2021) is disposed of.
11. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(SHEKHAR B. SARAF, J.)