

ORDER SHEET

AP/481/2021

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

BEST EASTERN BUSINESS HOUSE PRIVATE LIMITED
VS
MINA PRADHAN

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : 21st April, 2023

Appearance:

Mr. Ayan Banerjee, Adv.

Mr. Arijit Bhowmick, Adv.

Ms. Pooja Agarwal, Adv.

...for the petitioner

Mr. Surya Prasad Chattopadhyay, Adv.

Mr. Arjun Samanta, Adv.

Mr. Sohail Tarafder, Adv.

Mr. Ankit Chatterjee, Adv.

...for the respondent

The Court: This is an application for appointment of the Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

The factual matrix is provided below:-

The Respondent had requested financial assistance from the Petitioner to re-obtain her property, which was on lease with one Ashoka Inn and Suits. The Respondent agreed to sell the aforementioned property situated at Rock Wood at District Darjeeling admeasuring 7500 sq. feet for a consideration of Rs. 4.75 crores to the Petitioner. Thereafter, the hotel business continued in the said

property under the name of Hotel Green Park after the parties entered into a Partnership Agreement dated October 16, 2015 [hereinafter referred to as 'the Agreement']. The Petitioner accordingly made an upfront payment of Rs. 80 lakhs to the Respondent on the purchase and as per the Agreement, the profit-sharing ratio in the business between the parties was to be equally divided. The Respondent was supposedly running the business without remitting the Petitioner of its share of profits from the said business. Admittedly, a sum of Rs. 2.38 crores have been paid by Petitioner since the inception of the partnership for various reasons but the Respondent failed to ascertain the actual profits of the Petitioner in the Partnership Business. For the above-mentioned issues, the Petitioner filed an application under Sec. 9 of the Arbitration & Conciliation Act, 1996 for appointment of Receiver and prevention of any undue interference of the Respondent on the disputed land and thereafter the former was successful in obtaining an order of injunction from the Learned District Judge, Darjeeling. Thereafter, the Arbitration clause in the Agreement was invoked vide the Sec. 21 Notice to resolve the dispute at hand. However, the parties failed to nominate an Arbitrator jointly and therefore the Petitioner was constrained to file a Sec. 11(5) Application before the Hon'ble High Court that has exclusive jurisdiction to determine the matter and send it to the arbitral tribunal for further and final adjudication.

In view of the fact that the respondent has categorically agreed to signing of the said deed of partnership, there is no doubt that the parties have entered into a partnership deed. Issues of arbitrability and limitation are not required

to be looked into at this stage as there is an admission that consideration was paid by the petitioner to the respondent. Whether the partnership actually was acted upon by the parties will be required to be decided by the Arbitrator. The arbitration clause provides for appointment of two Arbitrators one each by the parties.

By consent of the parties, this Court appoints Mr. Rohit Banerjee, Bar Library Club, (Telephone No. 9163891670) as the sole Arbitrator to adjudicate 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.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

I make it clear that all points of arbitrability and limitation shall be kept open before the Arbitrator and the Arbitrator shall decide the same before entering into the merits of the case.

I further make it clear that any of the observations with regard to payment of money, etc made by this Court is only prima facie in nature and the Arbitrator shall be at liberty to decide on these issues without any reference to this order.

AP/481/2021 is disposed of.

(SHEKHAR B. SARAF, J.)