

OD-5

ORDER SHEET
AP/422/2023

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

A-ONE ASSOCIATES AND ORS.
VS
ABBEY HEALTH CARE PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th August, 2023.

Appearance:

Mr. Ritoban Sarkar, Adv.

Mr. Debojyoti Das, Adv.

Mr. Shivam Pathak, Adv.

Mr. Altamas Alim, Adv.

Mr. S. S. Bhutoria, Adv.

The Court: The fact that there is a dispute between the parties relatable to a clearing and forwarding Agreement described as – Agreement with C & F agent – would be evident from the respective stand taken on behalf of the parties.

The petitioners were appointed as the C & F agent for the respondent company for distributing and marketing the medicinal products of the respondent in the State of Odisha. The Agreement provides for a duration/term till 31st March, 2016 together with a renewal clause providing that the C & F agent would apply for renewal 30 days before the expiry and on expiry of the Agreement, the respondent may at its sole discretion renew the Agreement for a further period of one year or such further period as mutually agreed between the parties.

The crux of the dispute is that the petitioners say that the Agreement was renewed while the respondent says otherwise. Learned counsel appearing for the respondent also says that the petitioners' time for making any claim under the C & F Agreement expired on 31st March, 2019 and that the petitioners have also clubbed the claims under the C & F Agreement with an oral agreement between the parties for commission.

The petitioners' claim arises out of a security deposit of the petitioners amounting to approximately Rs.25 lakhs together with a claim for commission and transport expenses. The total claim now is of Rs.35 lakhs.

The C & F Agreement contains an arbitration clause and the petitioner invoked the arbitration clause on 2nd March, 2023 under Section 21 of the 1996 Act. The respondent did not reply to this letter.

The only issue worth considering is whether the petitioners have established the fact of extension of the C & F Agreement. The fact that this Agreement was indeed extended by way of exchange of mails and letters would appear from at least two mails and one letter of the respondent. The respondent's mails of 13th April, 2021 and 2nd December, 2021 were followed by the letter of 20th July, 2022. In the two mails, the respondent has mentioned the fact of the petitioners' security deposit lying with the respondent and that the respondent will clear the same within a certain time-frame. The respondent's letter of 20th July, 2022 also mentions the stock value lying at the end of the petitioners. The respondent also says that the C & F Agreement was not extended between the parties.

The written words of the respondent referring to the security deposit revert to the C & F Agreement since the petitioners gave the security deposit in

terms of that Agreement only. The continuing exchange between the parties even after April, 2021 mentioning the security deposit hence compels the Court to form a prima facie view that the C & F Agreement stood extended and that the parties acted upon the same.

Since there is an underlying arbitration agreement and a dispute which is relatable to that agreement, this Court is satisfied that this is a fit case where an Arbitrator must be appointed to resolve the disputes and differences between the parties.

The parties in this case would fall under Section 11(5) as well as 11(6) of the 1996 Act.

AP/422/2023 is accordingly allowed and disposed of by appointing Mr. Anil Kumar Gupta, Advocate (Mob: 9830258546) to act as the learned Arbitrator, subject to the Arbitrator communicating his/her consent in the prescribed format to the Registrar of this Court within three weeks from date. The advocate-on-record of the petitioners shall communicate this order on the Arbitrator by 7th August, 2023 with the relevant details of the contact person.

It is made clear that the Tribunal will be at liberty to go into the issue of limitation.

The respondent should file the Vakalatnama by 4.30 pm on 7th August, 2023.

(MOUSHUMI BHATTACHARYA, J.)