

OCD-6

ORDER SHEET

AP/424/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SQUARE CIRCLE MEDIA AND SPORTS PRIVATE LIMITED
Versus
MRS. KRISHNA DEVI AGARWAL AND ANR.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 11th July, 2023.

Appearance:
Mr. Rohit Das, Adv.
Ms. Kishwar Rahman, Adv.
Mr. Indradip Das, Adv.
Mr. Shreyash Dasgupta, Adv.
Ms. Sristi Roy, Adv.

Mr. Jayanta Sengupta, Adv.
Mr. Sanjib Bandyopadhyay, Adv.
Mr. Sounak Banerjee, Adv.

The Court: The agreement in existence is in the form of a Memorandum of Understanding and is dated 9th November, 2021. The agreement was entered into between the petitioner and the respondents for organising and marketing a Marathon which was proposed to be a "Unity and Integrity Event". According to the petitioner, the Marathon/ Event was successfully completed and the petitioner raised bills on the respondents for

the sum of Rs. 46.10 lakhs which had been incurred for organising and marketing the event.

The respondents are trustees of a Trust and engaged the petitioner to organise and market the Marathon.

The respondents dispute the claims made by the petitioner and learned counsel appearing for the respondents raises a further dispute of there being no arbitration agreement at all in terms of Section 7 of the 1996 Act. Counsel submits that even if there is an arbitration agreement, the MoU which is part of the records, is not the one which binds the parties.

Since an argument has been made on behalf of the respondents with regard to the existence of the arbitration agreement, that question needs to be answered first.

Section 7(1) of The Arbitration and Conciliation Act, 1996 defines an “arbitration agreement”. The expression “arbitration agreement” has been defined to mean an agreement between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between the parties in respect of a defined legal relationship regardless of whether the relationship is contractual or not. Section 7(2) explains that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and Section 7(3) mandates that the arbitration agreement shall be in writing. Section 7(4) clarifies what a written arbitration agreement is and provides three instances from Clauses (a) – (c) to explain an arbitration agreement in writing.

The present arbitration agreement is admittedly in writing. Counsel appearing for the respondents submits that the agreement is not signed by the parties as required under Section 7(4)(a) of the Act.

Section 7(4)(b), however, includes within the definition of an arbitration agreement, through an exchange of letters, telegrams, and other means of telecommunication and electronic communication which form a record of the agreement.

There are at least three instances in the correspondence exchanged between the parties which would show that the respondents acknowledged and admitted to the existence of the arbitration agreement which is before the Court. The respondents replied to the demand letter of the petitioner by a letter dated 17th June, 2022 which expressly refers to the MoU dated 9th November, 2021 in the very first paragraph to the letter. The respondents also referred to the MoU and more specifically to the arbitration clause in the MoU in its reply dated 6th July, 2022 to the petitioner's Section 21 notice dated 28th June, 2022. In the said letter dated 6th July, 2022, the respondents' simply disagreed with the choice of Arbitrator and further clarified the statement by saying that the disagreement was "...not at this stage...". The letter further refers to the "agreed clause" and goes on to raise a dispute on the merits owing to the allegedly irresponsible acts on the part of the petitioner.

The exchange of letters between the parties, as referred to in Section 7(4)(b) of the Act, shows beyond doubt that the respondents had indeed acknowledged the existence of the MoU and the arbitration agreement/ clauses in the MoU. The contention in this regard to the governing agreement, being a

different one and not the agreement which is part of the records, is an issue which the Arbitrator can well consider and decide.

Given the contentions raised on behalf of the parties, the parties would certainly fall under Section 11(6)(a) of the 1996 Act.

AP/424/2023 is accordingly allowed and disposed of by appointing Swarup Paul, Advocate (Mob: 8910903534) to act as the Arbitrator for resolving the disputes between the parties and subject to the Arbitrator communicating his consent in the prescribed format under Section 12 read with the Schedules to the Act within three weeks from today.

The petitioner shall communicate this order on the Arbitrator forthwith along with the particulars of the advocate-on-record of the petitioner to prevent any delay in the commencement of the arbitration.

(MOUSHUMI BHATTACHARYA, J.)

sg.