

OCD-3

ORDER SHEET

AP/433/2023

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

M/S ALPHA MEDICAL SERVICES PVT. LTD.
Versus
NEW ALPHA NURSING HOME AND ORS.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 12th July, 2023.

Appearance:
Mr. Shuvasish Sengupta, Adv.
...for the petitioner.

Mr. Narendra Prasad Gupta, Adv.
...for the respondent nos. 1,2 and 4

The Court: The respondent no.3 has been served but is not represented.

The first point raised on behalf of the respondents for resisting the application for appointment of the Arbitrator is the absence of a Board Resolution authorising the deponent acting on behalf of the petitioner for affirming the affidavit. This point becomes nullified in view of the extract of the minutes of the meeting of the Board of Directors of the petitioner dated 30th June, 2023 which authorised the deponent to act on behalf of the company

and do certain acts including affirming the affidavit on behalf of the company. The other point raised is that there is a second Leave and Licence Agreement between the parties as mentioned in the letter of termination.

The dispute between the parties is evident from the correspondence exchanged between the petitioner and the respondents who are the partners of the partnership firm running the nursing home. The nursing home/New Alpha Nursing Home and the partners thereof are the second party to a Leave and Licence Agreement dated 1st September, 2020. The petitioner was constrained to terminate the Agreement on 23rd November, 2022 in view of a notification of the Government of West Bengal dated 27th September, 2022 in the form of a show-cause letter cum closure notice to the respondent no.1. The termination letter was followed by surrender of the premises by way of a notice of the respondent no.1 dated 24th December, 2022. The petitioner thereafter invoked the arbitration clause on 14th February, 2023 in terms of Clause 23 of the Agreement which provides for arbitration with a seat at Howrah. The respondents did not reply to this notice. The petitioner also filed an application in the Commercial Court at Rajarhat under Section 9 of the 1996 Act which resulted in an order dated 31st March, 2023 restraining the respondents from inducting any third party in the scheduled licensed property.

The petitioner complains that the respondents, despite the notice of surrender, are continuing to use the licensed premises and have also failed to pay the licence fee at least from July, 2022 onwards.

There is, hence, a dispute between the parties and an Agreement with an arbitration clause governing the disputes. Therefore, the parties would fall under Section 11(6)(a) of the 1996 Act. The dispute whether there is a second agreement which governs the relationship between the parties can be decided by the Arbitrator upon appropriate applications being made.

AP/433/2023 is accordingly allowed and disposed of by appointing Ms. Soni Ojha, Advocate to act as the Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court, within three weeks from date. The petitioner will communicate this order on the Arbitrator by e-mail with relevant particulars of the contact person who may get in touch with the Arbitrator, if necessary.

(MOUSHUMI BHATTACHARYA, J.)