

OCD-3

ORDER SHEET

AP/537/2023

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

M/S. KAILAS TRADERS
VS
DHANVANTARY BIOSCIENCE PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th December, 2023.

Appearance:

Mr. Pourush Bandyopadhyay, Adv.

Mr. Sumit Biswas, Adv.

Ms. Rajashree Bhowmick, Adv.

...for the petitioner

Mr. Sarosij Dasgupta, Adv.

Ms. Afreen Begum, Adv.

...for the respondents

The Court: The petitioner's supplementary affidavit after assessment and payment of applicable stamp duty is taken on record.

The petitioner's grievance arises out of a Franchise Agreement, which is undated, by which the petitioner was to act as a franchisee and the seller of the respondents' products in the State of Kerala. The petitioner says, through learned counsel, that the Franchise Agreement was executed some time in August, 2021. Counsel bases this submission on contemporaneous documents.

The dispute centres on the unpaid invoices raised by the petitioner on the respondents. Counsel claims that the petitioner now has an outstanding of Rs.80 lakh inclusive of the security deposit of Rs.51 lakhs. The security deposit has been withheld by the respondents. It is also submitted that the last payment received by the petitioner was some time in October, 2021 amounting to about Rs.1.53 lakhs.

Learned counsel appearing for the respondents submits that the Agreement was for 3 years and hence the petitioner can only raise a claim for unpaid invoices after August, 2024. Counsel also submits that the petitioner did not take any steps for terminating the Agreement.

The arbitration clause contained in the Franchise Agreement envisages a 2-tier mechanism by which the aggrieved party would first have to make an attempt for mediation and thereafter wait for 60 days before invoking the arbitration clause in the Agreement. The petitioner issued the conciliation notice on 13th December, 2022, waited for 60 days and thereafter issued the Notice under Section 21 of the 1996 Act by way of a mail dated 27th April, 2023. The respondents had failed to respond to any of the notices sent by the mail of 27th April, 2023 including the Notice invoking the arbitration agreement. The petitioner has come to the Court for appointment of arbitrator to adjudicate the petitioner's demand of Rs.80 lakhs which the petitioner says is due and owing from the respondents.

The defence taken on behalf of the respondents is not acceptable since the terms of the Agreement do not indicate that the petitioner is precluded from demanding payment for the work done during the subsistence of the

Agreement or before August, 2024. The second point with regard to termination is also arguable since the petitioner claims that the petitioner took steps for terminating the Agreement and the respondents denied the same. The Court has not been able to find any letter stating that the petitioner terminated the Agreement at any point of time.

The dispute, however, is directly relatable to the arbitration clause in the Franchise Agreement and is required to be adjudicated by an arbitrator.

AP/537/2023 is, accordingly, allowed and disposed of by appointing Mr. Saumabho Ghosh, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 15th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)