

OCD-9

ORDER SHEET

AP/541/2023

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

MOHIT MALL
VS
MOTI LAL RATHI

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th September, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Avishek Guha, Adv.

Mr. Sariful Haque, Adv.

Ms. Debarati Das, Adv.

Ms. Ritika Pal, Adv.

Mr. Rajiv Kumar, Adv.

...for the petitioner

The Court: The affidavits of service placed before the Court show that the respondent was served twice, the first time on 11th August, 2023 and the second time on 4th September, 2023 after the petitioner had mentioned for listing of this matter.

The respondent is however not represented.

The present application is under Section 11 of the 1996 Act for appointment of an Arbitrator.

The petitioner relies on an order passed by this Court on 14th July, 2023 in an application taken out by the petitioner under Section 9 of the Act for

interim relief against the Small Industries Development Bank of India (SIDBI) from giving any effect to a notice of invocation of a personal guarantee given by the petitioner. The petitioner was given interim relief by way of restraining SIDBI from enforcing the personal guarantee against the petitioner. The relief was given on the ground that the petitioner had resigned as a Director from the company in question on 11th November, 2019 and that the Share Purchase Agreement (SPA) executed between the petitioner and the respondent on 19th July, 2019 provides, *inter alia*, that the petitioner shall be indemnified against all claims made in respect of the company and defaults committed by the company.

The SPA contains an arbitration agreement where the seat indicates that this Court has jurisdiction to entertain the present application.

The facts following the order dated 14th July, 2023 are also material to establish that there is indeed a dispute between the parties. Since the respondent was not represented before the Court on 14th July, 2023 despite service, the petitioner served the order along with the notice invoking the arbitration clause on 19th July, 2023.

The postal track report shows that the item was returned 'Refused' on 20th July, 2023. The petitioner invoked the arbitration agreement by a notice under Section 21 of the Act on 19th July, 2023 which was also served on the respondent as stated above.

The series of communications on the respondent show that the respondent does not wish to be represented or contest any of the proceedings

taken out by the petitioner. The existence of the arbitration agreement between the parties embedded in the SPA is not in dispute.

Further, the dispute between the parties relates to the respondent failing to take any steps in terms of the contractual conditions whereby the petitioner sold his shares in the company to the respondent and other clauses where the respondent was to inform SIDBI to relieve the petitioner from any continuing obligations as a shareholder of the company. It is evident that the respondent has not taken any steps since the petitioner came to the Court with a Section 9 application.

The prayer for appointment of Arbitrator is hence found to be legitimate under the 1996 Act.

AP/541/2023 is accordingly disposed of by appointing Mr. Subhra Sankar Bhatta, former District Judge to act as the Arbitrator subject to the learned Arbitrator communicating his/her 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 September, 2023 along with the requisite details of the contact person of the petitioner.

The other point which the petitioner seeks to urge is for extension of the period directed in the order dated 14th July, 2023 for constitution of the Arbitral Tribunal. By the said order the Tribunal was to be constituted by 15th September, 2023 and the parties were to take the steps as required under the arbitration agreement. Learned counsel appearing for the petitioner says that

the petitioner was unable to comply with this direction also in view of the several attempts to serve the respondent. The petitioner accordingly seeks extension of time to constitute the Arbitral Tribunal.

The parties shall hence constitute the Tribunal by 30th September, 2023.

The interim order shall accordingly remain in place till 13th October, 2023 subject to further orders being passed by the learned Arbitrator.

(MOUSHUMI BHATTACHARYA, J.)

R.Bhar