

OD-4

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

AP/597/2023

M/S WOW MOMO FOODS PVT LTD
VS
M/S SULFYAZ AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 5th October, 2023.

Appearance:

Mr. Rahul Singh, Adv.

Mr. Rahul Modak, Adv.

...for the petitioner

Mr. Ratul Das, Adv.

Ms. Ankita Upadhyay, Adv.

...for the respondents

The Court:-The petitioner seeks appointment of an Arbitrator in terms of a franchise agreement for distributing/selling the food products of the petitioner dated 7th January, 2013 which contains an arbitration clause. The Franchise Agreement was between one Sagar Jagdish Daryani and the respondent nos.1 and 2.

The petitioner entered into a subsequent agreement with the same respondents on 24th April, 2015 which incorporates the Franchise Agreement in Clause 2.4 by stating that the franchise agreement shall form an integral part of the agreement dated 24th April, 2015.

The dispute relates to unpaid franchise fees and the petitioner says that the respondent nos.1 and 2 owe approximately Rs.17.80 lakhs to the petitioner. The petitioner continued to receive payments till about 2021 but the respondents allegedly committed default on their payment obligations

thereafter. The petitioner invoked the arbitration clause in the franchise agreement by a notice dated 20th February, 2023 which was also in the form of a notice of demand.

Learned counsel appearing for the respondents submits that the respondent no.3 is not a signatory to either of the agreements. Counsel submits that the petitioner is not a party to the first agreement of 2013 and also that the claims are barred by limitation since there is no material on record between 2015 and 2023 when the arbitration agreement was invoked.

None of these objections are of relevance since the later 2015 agreement specifically incorporates the franchise agreement of 2013. It is also the petitioner's case that the petitioner received payments upto 2021 and the respondents became liable for default only after 2021. In any event, as settled by the Supreme Court, unless the referral Court is satisfied that the claims are *ex facie* barred by limitation, the issue of limitation is decided by the Arbitrator. This is not a case where the facts are stark enough for the Court to arrive at any conclusion of the petitioner's claim being barred by delay.

AP/597/2023 is accordingly allowed and disposed of by appointing Mr. Subhabrata Datta, Advocate 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 9th October, 2023 along with the requisite details of the contact person of the petitioner.

The name of the respondent no.3 may be deleted from the array of parties.

The direction on the respondents to pay costs as given by the order of 20th September, 2023 is recalled.

(MOUSHUMI BHATTACHARYA, J.)

bp