

OCD-5

ORDER SHEET

AP/617/2023

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

S K INTERNATIONAL
Versus
APRICOT FOODS PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 19th September, 2023.

Appearance:

Mr. Dyutimoy Pal, Adv.

Ms. Akansha Yadav, Adv.

Mr. Syeda Romana Sjultan, Adv.

...for the petitioner

Mr. Zulfiqar Al Ali Quaderi, Adv.

...for the respondent

The Court: The dispute between the parties relates to a Purchase Agreement dated 9th April, 2021 executed between the petitioner and the respondent whereby the petitioner was to supply potatoes to the respondent and the respondent, in turn, was to lift a certain quantity of potatoes – 200-250 mt per month – from the petitioner.

According to the petitioner, the respondent failed to lift the agreed quantity of potatoes and the petitioner consequently suffered damages. The petitioner claims approximately Rs.3.33 crores on account of the cost of procuring the potatoes from the open market and the consequential loss on account of the petitioner being unable to supply the agreed quantity to the respondent.

The petitioner invoked the arbitration clause, which is Clause 13 of the Agreement, on 12th May, 2023 and nominated its Arbitrator. The respondent did not reply to the said Notice.

The dispute is directly relatable to the arbitration Agreement dated 9th April, 2021 and the respondent admits that there is an existing dispute between the parties. This is, therefore, a fit case under Sections 11(5) and 11(6) of the 1996 Act.

AP/617/2023 is accordingly allowed and disposed of by appointing Mr. Tapan Kr. Dutt, former Judge of this Court 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 22nd September, 2023 along with the requisite details of the contact person of the petitioner.

The technical point raised on behalf of the respondent of the application not containing the required verification under Order VI Rule 15-A of the Code of Civil Procedure as amended by The Commercial Courts Act, 2015, is not relevant since the amendment relates to verification of pleadings in a commercial dispute and Order VI Rule 1 of the Code of Civil Procedure defines pleading only to mean the plaint or written statement.

(MOUSHUMI BHATTACHARYA, J.)