

OCD-9

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

AP/731/2023

WIKREATE WORLDWIDE PRIVATE LIMITED
VS
THE CALCUTTA MEDICAL RESEARCH INSTITUTE

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 16th October, 2023.

Appearance:

*Mr. Sukrit Mukherjee, Adv.
Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
...for the petitioner*

*Mr. Snehashis Sen, Adv.
Mr. Abhishek Banerjee, Adv.
...for the respondent*

The Court:- The resistance to the Section 11 application is not that there is no dispute between the parties but that the petitioner should be kept within the confines of the last and fourth agreement executed between the parties, namely, the Service Agreement dated 17th December, 2022. There is a reason for this resistance since this is the only agreement which contains an arbitration clause; none of the earlier three agreements contain an arbitration clause. The respondent hence says that the petitioner cannot consolidate its

claims under all the four agreements and sustain them by way of a Section 21 notice which was issued to the respondent on 7th May, 2023.

The only point which is to be decided is whether the Court can ignore the first three agreements and rely on the last and final Service Agreement and if yes, whether the petitioner can be kept within the bounds of the final agreement in respect of the claims raised by the petitioner on the respondent.

The four agreements are of 21st December, 2020 followed by two Addenda of 1st July, 2021 and 1st April, 2022. The last “Service Agreement” which contains the arbitration clause is of 17th December, 2022. It is not in dispute that the scope of work was delineated in the first agreement where the petitioner was engaged as the digital marketing service provider for the respondent. The scope of work continued thereafter through the two Addenda and culminated in the Service Agreement which contains the arbitration clause.

It is also not in dispute that both the parties before the Court executed and were signatories to all the four agreements. This Court not only finds commonality of parties but also commonality of work and purpose in all the four agreements. The parties would hence be covered by the Supreme Court decision in *Ameet Lalchand Shah Vs. Rishabh Enterprises and Another*, (2018) 15 SCC 678 and *Chloro Controls (I) P. Ltd. Vs. Severn Trent Water Purification*, reported in (2013) 1 SCC 641 where even non-signatories were brought within the fold of the arbitration agreement. *Ameet Lalchand Shah* involved a parent

agreement and offspring agreements with a common connection which were also brought within the fold of arbitration. Both these judgments were considered by a co-ordinate Bench in *Tantia Constructions Vs. Mather and Platt Pumps Limited*, 2023 SCC OnLine Cal 1142. The petitioner here in fact is on a better footing than the petitioner in *Tantia Constructions* in relation to the fact of supersession.

The petitioner has provided consolidated service to the respondent by way of the four agreements; the obligation of the respondent to pay for the service rendered by the petitioner hence cannot be restricted only to the final Service Agreement of 17th December, 2022. The respondent's reply of 13th June, 2023 to the petitioner's Section 21 notice does not dispute the arbitration agreement but raises the point of supersession. In any event, the argument made by the parties can well be considered by the Arbitrator including that of supersession and the claim being restricted to the Service Agreement.

The Court is of the view that the arbitration agreement in the last and final Service Agreement can actually be traced back to the three agreements which were executed between the parties before the Service Agreement.

AP/713/2023 is accordingly allowed and disposed of by appointing Mr. Abhidipto Tarafdar, Counsel to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator

communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 18th October, 2023 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)

T.O.
A.R. (C.R.)