

OCD-2

ORDER SHEET

AP/825/2022

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

KHAITAN (INDIA) LIMITED
VS
MICRO PRECESSION PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 29th August, 2023.

Appearance:

Mr. Sourajit Dasgupta, Adv.

Md. Asalan, Adv.

...for the petitioner

The Court: The petitioner has attempted to serve the respondent three times. The affidavit-of-service which is filed in Court shows that the last attempt was made on 17th August, 2023. The respondent is not represented.

The dispute between the parties arises out of a Licence Agreement dated 23rd July, 2019 whereby the respondent was to market products bearing the petitioner's trade mark/brand name upon royalty being paid by the respondent to the petitioner. The Agreement specifies the mode and manner of payment of royalty. The respondent committed default in payment of royalty from June, 2021 and parties thereafter entered into a supplementary Agreement of 27th

October, 2020 which contained a clause indicating that the Agreement is supplemental to the Licence Agreement and all the terms and conditions mentioned in the Licence Agreement shall remain unchanged and enforceable. The respondent, however, continued to default in its royalty-payment obligations and the petitioner was constrained to terminate the Licence Agreement on 2nd April, 2022. The petitioner thereafter invoked the arbitration clause contained in the Licence Agreement by a notice sent under Section 21 of the Act on 7th September, 2022.

This is the case made out by the petitioner. The petitioner presently claims an amount of approximately Rs.1.64 crores by way of outstanding royalty payments from the respondent.

In the absence of the respondent, this Court is constrained to hold on the facts presented to the Court that a dispute exists between the parties. The arbitration clause contained in the Licence Agreement and continued in the supplementary Agreement provides for appointment of a “common arbitrator” which presumably means a single Arbitrator for settlement of the disputes and differences between the parties. The respondent has not replied to the notice invoking the arbitration clause of 7th September, 2022 till date. This Court is, hence, of the view that this is a fit case under Section 11(6) of the 1996 Act for appointment of an Arbitrator.

AP/825/2022 is, accordingly, allowed and disposed of by appointing Ms. Sharda Hariharan, Advocate to act as the learned Arbitrator, subject to the

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

The advocate-on-record of the petitioner shall communicate this order on the learned Arbitrator by 31st August, 2023 and also to the respondent within the same time frame. Advocate-on-record of the petitioner shall also give the requisite details of the contact person of the petitioner to the learned Arbitrator.

(MOUSHUMI BHATTACHARYA, J.)