

ORDER SHEET

AP/681/2023

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

M/S. UGRO CAPITAL LIMITED  
VS  
RIGHT HEALTH PLATTER PRIVATE LIMITED AND ORS.

BEFORE:  
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA  
Date : 10<sup>th</sup> January, 2024.

Appearance:  
*Ms. Shrayashee Das, Adv.*  
*Mr. Rohan Kumar Thakur, Adv.*  
*.... for the petitioner*

*Mr. Sourav Mukherjee, Adv.*  
*Mr. Parashar Baidya, Adv.*  
*Ms. Sahana Pal, Adv.*  
*...for respondent nos. 2 & 3*

The Court: The matter was listed today on the prayer made on behalf of the respondents.

On the last occasion, learned counsel appearing for the respondents had made an argument that Clause 15.2 of the Facility Agreement dated 27<sup>th</sup> May, 2023 executed between the parties has a measure of ambiguity. According to counsel, the seat and venue of arbitration, chosen by the parties, to be in Kolkata, can only be given effect to where some cause of action had arisen in Kolkata.

Counsel relies on a judgment of this Court reported in (2020) 3 Cal LT 256, *Srei Equipment Finance Limited vs. Seirra Infraventure Private Limited*.

The judgment does not help the respondents since the Court had relied on the series of decisions pronounced by the Supreme Court including in *BGS SGS SOMA JV v. NHPC Limited*, (2020) 4 SCC 234 where the Supreme Court had conclusively held that the seat/venue clause of the arbitration agreement would decide the jurisdictional Court. Therefore, this decision goes against the respondents.

As noted in the earlier orders, the petitioner has already invoked the arbitration agreement by way of a notice under Section 21 of the 1996 Act. The notice was sent on 21<sup>st</sup> December, 2023. Hence, the parties are ready to proceed to arbitration subject to further orders passed by the Court if there is a disagreement as to the choice of Arbitrator.

In any event, Section 9(2) of the Act casts a responsibility on the petitioner who obtains an order under Section 9(1) to have the Arbitral Tribunal constituted within 90 days from the date of the interim order.

AP/681/2023 is accordingly allowed and disposed of by confirming the interim orders dated 3<sup>rd</sup> October, 2023 and 22<sup>nd</sup> December, 2023 for six weeks from today or until further orders passed by the Arbitrator, whichever is earlier.

The submissions noted above were made only on behalf of respondent nos. 2 and 3.

(MOUSHUMI BHATTACHARYA, J.)