

OD-8

ORDER SHEET

AP/790/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

M/S. WOW MOMO FOODS PRIVATE LIMITED
VS
MRS. RUMA SAHA

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 10th September, 2024.

Appearance:
Mr. Raunak Satpathy, Adv.
Mr. Rahul Modak, Adv.
...for the petitioner

The Court: Despite substituted service, none appears for the respondent at the time of call.

The affidavit of service filed today be kept on record.

Learned counsel for the petitioner places reliance on Clause 12.1 of the License Agreement between the parties which contains a provision for arbitration in case of disputes arising in respect of the agreement between the parties.

IT transpires from the averments made in the application and materials annexed thereto that since attempts at amicable resolution have failed and a notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated

June 17, 2022 issued by the petitioner has also failed to elicit any response, the petitioner has chosen to prefer the instant application under Section 11 of the said Act.

From a perusal of the materials annexed, it transpires that sufficient presumption of service in respect of the notice under Section 21 can be derived from the courier slips annexed to the present application which are addressed at the disclosed address of the respondent.

That apart, since the notice was issued on June 17, 2022 and the limitation period of three years for filing the present application under Section 11 in terms of Article 137 of the Schedule to the Limitation Act has not yet expired, there is no bar otherwise to refer the dispute to arbitration.

This Court is conscious of the fact that there might be scope of interpretation or argument in support of construing the provisions of the agreement as a lease agreement. However, in such event also, the occupation charge payable under the said agreement takes it outside the ceiling limit of the Rent Control Act prevailing in the State of West Bengal, which is a special statute designating specific forums/courts. As such, there is no *ex facie* bar to the subject matter to be referred to arbitration.

Also, the cause of action for the present dispute as disclosed in the Section 21 application comes squarely within the ambit of the arbitration clause in the agreement. It is, however, made clear that the above opinions are of a *prima facie* and tentative nature, only for the adjudication of the present Section 11 application and it will be open to the arbitrator to delve into all such issues on merits if raised.

Accordingly, AP /790/2022 is allowed, thereby appointing Mr. Tanmay Mukherjee, Advocate (Mobile No. 9874218610), a member of the Bar Association, as the sole arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator. The learned Arbitrator shall fix his own remuneration, in consultation with the parties and within the framework of 1996 Act, in particular the Fourth Schedule thereof.

(SABYASACHI BHATTACHARYYA, J.)