

OCD -2

ORDER SHEET

AP-COM/7/2025

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

TAPAN GHOSH

VS

SANJAY GANGULY AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th February, 2025.

Appearance:

Mr. Debdatta Saha, Adv.

Mr. Subhamay Dewanji, Adv.

.... for the petitioner

The Court: In the order dated January 28, 2025, the appearance of the learned advocates for the State respondent be deleted.

Affidavit of service is taken on record.

None appears on behalf of the respondents. The added respondent is also not before Court.

This is an application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act).

The respondent nos. 1 to 3 vehemently opposed the application on earlier occasions, on the ground that unless Amitava Maity wasimpleaded in the application as a respondent, and unless all the partners were party

respondents, the application must fail for non-joinder of parties. The matter was heard at length and was fixed today at 1.00 p.m., with a direction to add Amitava Maity as a respondent and serve him. Amitava Maity was sought to be served at his last known address mentioned in the partnership deed. The postal article returned unserved. This is sufficient compliance of Section 3 of the said Act. Today, none appears to represent the respondents. Under such circumstances, this Court proceeds to take up the matter in the absence of the respondents. Liberty was also granted to the respondents to file their affidavits-in-opposition, but no such affidavit has been filed. The respondents have chosen to stay away from the proceeding.

The petitioner claims to be a partner of an unregistered partnership firm, named and styled as Lokenath Infra Con. The specific averment in the application is that one of the partners (who was added as a party respondent at the insistence of the respondent nos. 1 to 3) had retired from the partnership firm with the consent of the majority partners. Thus, Amitava Maity had not been impleaded as a respondent. However, in order to avoid all controversies and upon acceptance of the plea of the respondent nos. 1 to 3, Amitava Maity was added in the proceeding. He is not appearing.

The petitioner contends that he had invested substantial amount of money in the partnership business. However, as the petitioner had a stable job, he neither withdrew his profit nor any salary from the said business. On August 31, 2023, the petitioner retired from his service and also sought to

retire from the partnership business. Assessing his dues to be around Rs. 39,29,250/- inclusive of capital investment, commission from sales and salaries etc., the petitioner approached the other existing partners for their consent so that he could withdraw the money and retire from the partnership business. The respondents allegedly did not allow the petitioner to retire with the money. Accordingly, the petitioner issued a demand notice on October 21, 2024, demanding a sum of Rs.39,29,250/- along with interest at the rate of 18% per annum. The petitioner has indicated the dues on and from 2013 to 2014 and commission from 2015 to 2024. In terms of clause 15 of the partnership agreement dated August 5, 2023, all disputes and differences arising out of the said partnership agreement were to be adjudicated by a sole arbitrator to be appointed by the parties. The petitioner commenced the arbitration proceeding by issuing the notice under Section 21 of the Arbitration and Conciliation Act, 1996 on November 5, 2024. By letter dated November 7, 2024, the respondents objected to the demands made by the petitioner and replied to the said notice by denying the claim of the petitioner. It is an admitted fact that the petitioner approached the respondent for appointment of a learned arbitrator and proposed a name. The respondent did not propose any name. Finding no other alternative, the petitioner approached this Court under Section 11 of the said Act for appointment of an arbitrator. The petitioner submits that the partnership agreement was executed between the parties in

Kolkata. The respondents are also residing in Kolkata and the firm is carrying on its business at Kolkata.

Mr. Prosenjit Mukherjee, learned advocate for the respondents on the earlier occasion appeared before this Court on behalf of the respondents Nos. 1 to 3. He raised two fold objections. First, that the claims were time barred and secondly an unregistered partnership firm should be sued in the name of all the partners. Accordingly, Amitava Maity was added by order of this Court. It appears that there are claims from 2013/2015 upto 2024. Thus, in the present situation, it is not the duty of the referral Court to segregate the claims and decide what was exactly due and payable or at all. The question of limitation can be urged before the learned arbitrator. It is also available from the records that the terms and conditions under which the petitioner is to retire and the resistance of the respondents in allowing the petitioner to retire with his alleged dues are subject matters of the dispute. Under such circumstances, limitation is a mixed question of law and fact.

Under such circumstances, the application is disposed of by appointing Mr. Saunak Bhattacharya (M-9830420018), learned Advocate as the sole arbitrator to arbitrate upon the disputes between the parties. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

All objections, including the point of limitation, rights of the petitioner and those which were earlier raised by the respondents before this Court, shall be raised before the learned arbitrator. This Court has not observed on the merits of the claims made by the petitioner.

(SHAMPA SARKAR, J.)

TR/