

OCD -15

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/86/2025
M/S WOW MOMO FOODS PVT LTD
VS
AMIT AGARWAL AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 12th March, 2025.

Appearance:

Mr. Raunak Satpathi, Adv.

Mr. Rahul Singh, Adv.

Mr. Rahul Modak, Adv.

.... for the petitioner

Mr. Nishant Saraf, Adv.

Mr. Aditya Chakraborty, Adv.

Mrs. Neha Gupta, Adv.

...for respondent no. 1

Mr. Prosit Deb, Adv.

Ms. Kiran Kumari Mahato, Adv.

....for respondent no. 2

The Court: This is an application for interim relief. Considering the prayers made in this application, this Court is of the view that as of now, the prayer for direction upon the respondent to furnish a bank guarantee, to secure the money which the petitioner had allegedly invested in the infrastructure, for getting the outlet of Wow Momo Foods Pvt. Ltd. ready, is still in the realm of unliquidated damages and cannot be allowed.

The contention of the respondent no. 1 is that, the respondent no. 1 has not been disturbing the possession of the petitioner and there is no scope for any order of injunction.

The allegation of the petitioner is with regard to non-refund of the amount that the petitioner allegedly invested in the business. The respondent no. 1 failed to obtain licences and complete other statutory compliances. Such failure prevented the petitioner from operating the outlet. Thus, the respondent no.1 was bound to pay back the money invested by the petitioner.

The agreement between the petitioner and respondent no. 1 contains an arbitration clause, for settlement of dispute between the parties. A notice invoking arbitration, has been issued. Thus, whether the petitioner has a right to claim the amount invested in the business, from respondent no.1, on the allegation of breach of the terms of the contract, is to be decided in the arbitration proceeding between the petitioner and the respondent no. 1. The claim is in the nature of damages/compensation, which is yet to be calculated. It is a matter of evidence. The issue is arbitrable. The prayer for a direction upon the respondent no.1, to secure such money claim by furnishing security, cannot be allowed.

The respondent no. 2 is a director of the company which owns the premises. The said respondent is not a signatory to the agreement between the petitioner and the respondent no. 1. The respondent no. 2 does not, prima facie, appear to be connected with the said arrangement. The learned Advocate

submits that the arrangement between the petitioner and the respondent no. 1 was contrary to the terms of the lease deed by which the respondent no.1 was put in possession.

Thus, the right of the respondent no. 2 to proceed against the petitioner as also against the respondent no.1, is left open and to be decided by an appropriate forum. This Court has not expressed any opinion on such right. This Court also does not decide the involvement of respondent no. 2 in the arrangement between the petitioner and the respondent no.1.

Under such circumstances, as the possession of the petitioner is not denied by the respondent no.1, the application is disposed of by restricting the respondent no. 1 or its men and agent from disturbing the possession of the petitioner in respect of the premises in question, having a carpet area of 405 Sq. foot Carpet Area at Block-B, Ground Floor, 22, Camac Street, Opposite Saturday Club, Kankaria Estates, Elgin, Ward-63, Kolkata 700016, for a period of three months from date, within which time the petitioner shall be at liberty to invoke arbitration.

Upon expiry of the aforementioned period, the petitioner shall be at liberty to make further prayers before the learned Arbitrator, for necessary interim orders, in accordance with law.

Vakalatnama filed by respondent no. 1, is taken on record.

Leave is granted to the respondent no. 2, to file Vakalatnama in the department, within two weeks from date.

As no affidavits have been called for, the allegations are deemed to be denied by the respondents. The observations made hereinabove are tentative and shall not influence the learned Arbitrator.

(SHAMPA SARKAR, J.)

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