

ORDER SHEET
AP-COM/119/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

KRIISHIV COMPLEX PRIVATE LIMITED
VS
ABIRA NIRMAN UDYOG LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 26th February, 2025.

Appearance:
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Debrup Bhattacharya, Adv.
Mr. R.N. Ghosh, Adv.
Ms. Pritha Ghose, Adv.
...for the petitioner

Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Mr. Sukalyan Chakraborty, Adv.
...for the respondent nos. 1 to 7

The Court:

1. This is an application for appointment of an Arbitrator. The dispute arose out of a Share Purchase Agreement dated February 8, 2022. The said purchase agreement was entered into between six companies, seven shareholders of those companies and six buyers. The arbitration agreement appears is Clause 13.5. The clause provides that if the disputes are not settled amicably within 30 days or within such extended period as may be mutually agreed by the parties, any party being the claimant may refer the dispute to arbitration by issuing to the other parties a notice upon which the dispute shall be referred to arbitration in accordance with the

terms of Clause 13.5.3. Clause 13.5.3 provides that subject to Clause 13.5.1, any dispute shall be finally submitted to a binding arbitration in accordance with the Arbitration and Conciliation Act, 1996. A conjoint reading of the above two provisions, leads this Court to hold that the parties agreed to refer all disputes to arbitration. The governing law and jurisdiction provides that the Courts of Kolkata will have exclusive jurisdiction in relation to all matters arising out of this agreement. The petitioner company has raised a dispute with regard to certain payments made towards property tax, which were payable by the sellers/its shareholders. Clause 8 of the said agreement is the indemnification clause. The said clause states as follows:

8. INDEMNIFICATION

8.1 The Sellers (each, a **“Indemnifying Party”** and together, **“Indemnifying Parties”**) agree and undertake to jointly and severally indemnify, defend and hold harmless and keep indemnified (on their behalf and on behalf of the Companies), the Buyers, their Affiliates, directors, authorized representatives, officers and/or the Companies (including its Directors, authorised representatives officers, and employees) (each, a **“Indemnified Party”** and together **“Indemnified Parties”**), to the fullest extent from and against any and all Losses (past, present or future) relating to the period prior to the Closing, suffered or incurred by any Indemnified Party, at any time and from time to time, arising out of or in connection with the following:

(a) breach of any of the Warranties by Sellers;

(b) any of the Warranty given by the Seller(s) being untrue, incorrect or misleading;

(c) any breach, default or violation of, or fulfil any other covenant, undertaking, action or obligation of the Sellers or their directors, officers, employees, agents or representatives, as the case may be, under this Agreement;

(d) any violation/default by the Sellers, as the case may be, of applicable laws, regulations, approvals and certifications in relation to the Scheduled Property;

(e) the Sellers' title to the Scheduled Property not being valid, clear, marketable and transferrable;

(f) any event, act, omission, negligence, fraud, cheating or willful default on the part of the Sellers arising prior to the SPA, whether Claims in relation to the above arise prior to or after the Effective Date;

(g) the purchase of the said Sale Shares being declared void by any Government Authority;

(h) any issues or non-compliance of Applicable Laws in relation to the Scheduled Property (including but not limited to the Urban Land (Ceiling and Regulation) Act, 1976) which in any way adversely affects or restricts the Buyers' right or ability to obtain any Governmental approval or consent for construction at the Scheduled Property;

(i) any Tax Claims being made on, or any Taxes falling on/becoming payable by the Buyers in relation to the period prior to the execution of this Agreement, or which arises due to any action taken by, or inaction

of, the Sellers during the period prior to the execution of this Agreement; and

(j) any and all adverse orders that may be passed pursuant to any other Proceedings, prior to consummation of the Transaction, that may impact the right, title and/or interest of the Buyers over the Scheduled Property;

2. The dispute and the claim of the petitioner are in respect of Clause (i) above.

3. Learned advocate for the respondents/sellers submits that the matter should be heard in the non-commercial division as sale of shares is not covered under the definition of a commercial dispute. This Court does not agree with such submission. Section 2(c)(xviii) covers agreement for sale of goods as a commercial dispute. Goods as defined under the Sale of Goods Act, 1930, includes shares. Thus, this application can be proceeded in the Commercial Division. In any event, at the stage of referral, whether the application is registered in the Commercial Division or not, is of little significance. The referral Court is required to adjudicate whether there is an arbitration clause and whether the dispute is alive. The petitioner issued a notice invoking arbitration to the respondents on August 21, 2024. The respondents replied to the same on September 17, 2024, denying the claims of the petitioner. The objections of the respondents are that, the indemnification clause does not apply to the petitioner. The petitioner cannot take advantage of such clause. There are subsequent deeds of conveyance by which the shares were sold. Those deeds do not contain any arbitration clause.

4. In my opinion, the referral Court is to restrain its consideration to the subject agreement which is before the Court. The said agreement contains an arbitration clause. Whether there has been any novation of the said agreement by subsequent deeds of conveyances, is a matter which shall be decided by the learned Arbitrator and the respondent can always raise an objection as to jurisdiction and arbitrability of the disputes by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996, and the learned Arbitrator shall decide the same.

5. This Court is not inclined to express any opinion on the objections raised with regard to the merits of the claim and entitlement of the petitioner to such money which were allegedly paid by the petitioner towards taxes etc. Moreover, whether the arbitral proceedings could proceed only against the respondents alone, is again a matter to be decided by the learned Arbitrator. Issue of non-joinder is left open to be decided by the learned Arbitrator.

6. Under such circumstances, this application is allowed upon this Court being satisfied that there is an arbitration clause in the subject agreement and that the dispute is alive.

7. Although, the agreement provides for appointment of an Arbitral Tribunal, both the learned counsel for the parties submit before this Court that the dispute should be referred to a single Arbitrator for convenience. Under such circumstances and on recording such submissions of the parties and their consent for appointment of a single arbitrator, the court appoints a single arbitrator.

8. Parties undertake that, composition of the Tribunal will not be a dispute in future.

9. Accordingly, the Court appoints Hon'ble Justice Debasish Kar Gupta, former Chief Justice of the Calcutta High Court, as the Arbitrator, to arbitrate upon the dispute between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

10. AP-COM/119/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)