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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/26/2025
ASOKA FLAT OWNER'S ASSOCIATION
VS
SHREE BANKE BIHARI ENTERPRISES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR
Date :25th February, 2025

Appearance :
Mr. Farhan Ghaffar, Adv.
Ms. Shreya Srivastava, Adv.
Mr. Ankit Chaturbedy, Adv.
...for petitioner

The Court :**1.** Despite service none appears on behalf of the respondent. The notice invoking arbitration was also served upon the respondent.

2. This is an application by Asoka Flat Owners Association, which is a company registered under the Companies Act, 2013. The petitioner prays for appointment of a learned Arbitrator on the strength of Article 52 of the Articles of Association, which is set out hereunder:-

“52. Whenever any difference or dispute arises between association on one hand and any of the members or their heirs, executors,

administrators or assignees on the other hand or between the members inter-se or their respective heirs, executors, administrators or assignees inter-se touching the true intent or construction or the incidents or consequences of these presents or of the statutes or touching anything then or thereafter done, executed, omitted or suffered in pursuance of these presents or of the statutes touching any breach or alleged breach, or otherwise relating to the premises or to these presents or to any statutes affecting the association or any of the affairs of the association, every such difference or dispute shall be referred to the decision of the single arbitrator to be appointed by the parties to the dispute or in difference or if they cannot agree upon a single arbitrator to the dispute or in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators, of whom one shall be appointed by each of the parties to dispute or difference, and such arbitrations will be governed by the legislative provisions relating to the arbitrations in India for the time being in force.”

3. The clause provides that any dispute arising between the members of the Association or between the Association and its members in respect of the flats or any issue arising therefrom shall be referred to arbitration.

4. According to Mr. Farhan Ghaffar, learned Advocate for the petitioner, the disputes have arisen when the respondent failed to pay up the maintenance charges and other dues. In terms of the said dispute resolution clause, such dispute or difference should be referred to arbitration. The dispute resolution clause provides that the parties should attempt to get the disputes settled by a single Arbitrator or if they do not agree upon a single Arbitrator, by a decision of the two Arbitrators.

5. In the instant case, the petitioner issued a notice invoking arbitration, by a letter dated September 11, 2024. The nature of the dispute has been

elaborated in paragraphs 1 to 5 of the said notice. The intention to arbitrate is available from the notice and the petitioner nominated its Arbitrator. However, as no response was received to the notice, the petitioner has approached this Court for appointment of an Arbitrator. The clause provides for arbitration by a single Arbitrator, and in case of disagreement by a tribunal. There is no reply from the respondent demonstrating any disagreement to the nomination by the petitioner. The respondent remained silent.

6. Under such circumstances, Mr. Arif Ali, learned Advocate (Mobile no.9830445942) is appointed as the learned Arbitrator to arbitrate upon the disputes between the parties.

7. All points are left open to be adjudicated by the learned Arbitrator including the arbitrability of the disputes.

8. The respondent shall be at liberty to take all objections before the learned Arbitrator, including arbitrability of the disputes as also the jurisdiction of the learned Arbitrator, if available in law.

9. 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 the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)