

OCD 16

ORDER SHEET
AP-COM/181/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

KRISHNAAA MOTION PICTURE
VS
CAMELIA PRODUCTION PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 19th March, 2025.

Appearance:
Mr. Debraj Sahu, Adv.
Mr. Hareram Singh, Adv.
Ms. S. Mitra, Adv.
Ms. S. Auddya, Adv.
...for the petitioner

Mr. Buddhadeb Das, Adv.
...for the respondent

The Court:

1. Affidavit of service is taken on record.
2. This is an application for appointment of a learned Arbitrator, in terms of the Dispute Resolution Clause contained in the agreement dated December 10, 2019. The parties had entered into an agreement. The petitioner is the second party to the agreement. The agreement deals with production of a movie and sharing of the net returns and other rights, upon screening of the movie.

3. According to the petitioner, the movie was released on January 13, 2023. The petitioner became entitled to 25% of the net return as co-producer or a proportionate return on investment along with proportionate digital and satellite rights. The petitioner contends that, the net return as payable under the agreement, had been denied. No payments had been made, although the petitioner had invested approximately Rs.44 lakhs.
4. The petitioner refers to the dispute resolution clause and submits that disputes were at first to be settled amicably. Failing amicable settlement, the same were to be referred to arbitration and Sri Arindam Sil would be the sole Arbitrator. By a notice dated February 2, 2024, the petitioner called upon the respondent to pay a sum of Rs.66 lakhs in terms of the agreement. The said demand notice was received by the respondent. By another notice dated March 11, 2024, the petitioner requested for an amicable settlement. The respondent did not reply. By a notice dated April 9, 2024, the arbitration clause was invoked by the petitioner. The notice was delivered to the respondent.
5. On April 24, 2024, the respondent issued a reply. The reply was addressed to the learned Advocate for the petitioner. The petitioner was asked to attend a meeting at the office of the respondent, with the accounts, the profit and loss, sharing etc. The reply further stated that the petitioner should refrain from sending misinformed, false and frivolous communication in future.

6. The petitioner responded to the notice dated April 24, 2024, by a notice dated June 13, 2024, through a learned Advocate. In spite of a series of correspondence between the parties, the matter was not resolved. Finally, by a letter dated August 9, 2024, the petitioner invoked arbitration and suggested the name of a learned Arbitrator. The said notice was delivered to the respondent. The respondent did not take steps. The mechanism provided for appointment of the named arbitrator under the agreement, failed. The petitioner has approached this Court for appointment of a learned Arbitrator.
7. Learned Advocate for the respondent submits that the agreement does not guarantee any return to the petitioner. Neither any schedule nor any debt nor any mechanism for return on investment or enjoyment of the proportionate rights etc. had been provided for in the agreement. Secondly, the possibility of an amicable settlement had not been exhausted. It is also submitted by the learned Advocate for the respondent that, the arbitration clause is incomplete. Under such circumstances, the application should be dismissed.
8. Having heard the learned Advocates for the respective parties, this Court is of the view that the objection as to whether any return on investments had been guaranteed or any proportionate satellite and digital rights had been guaranteed, are matters to be decided by the learned Arbitrator, upon adjudication of the admissibility of the claims of the petitioner. The first objection to the prayer for reference fails. The referral Court is not required to delve deeper into the merits of the

claims of the petitioner, but the respondent is always at liberty to raise objections with regard to admissibility, before the learned Arbitrator. The second contention of the respondent that, the application is premature as amicable settlement had not been explored, is now considered. This Court is of the view that the communications between the parties, which have been discussed hereinabove, would adequately show that relegating the petitioner to further rounds of discussions and deliberations with the respondent, will be an empty formality and will result in unnecessary wastage of time. The dispute is not likely to be resolved. There are allegations and counter-allegations.

9. Reference is made to the decision of ***Visa International Ltd. v. Continental Resources (USA) Ltd.***, reported in ***(2009) 2 SCC 55*** the relevant portion is quoted below:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an

amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

10. In the decision of ***Demerara Distilleries Private Limited and Another v. Demerar Distillers Limited*** reported in **(2015)13 SCC 610**, the relevant paragraph is quoted below:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration.”

11. The third contention of the respondent that the dispute resolution clause does not constitute an arbitration clause is also not accepted.

The relevant clause of the agreement is set out below :

“Any dispute and difference will be settled amicably and if otherwise it will be referred to arbitration, where sole arbitrator will be Sri Arindam Sil.”

12. The said clause adequately displays meeting of minds of the parties to refer to their disputes to arbitration and a sole arbitrator had been named. Even if the seat or the venue or the applicable law is not mentioned, the Court finds that the meeting of minds is available. Here, reference is not an option. When the venue or seat is not mentioned, the Court within whose jurisdiction the cause of action wholly or partly arose, shall be the referral Court. In this case, the entire cause of action arose within Kolkata and thus, this Court has jurisdiction to entertain this application under Section 11 of the Arbitration and Conciliation Act, 1996.

13. In the matter of ***Jagdish Chander vs Ramesh Chander & Ors*** reported in ***AIR 2007 SC 107***, the ***Hon'ble Apex Court held as follows:-***

“8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in *K K Modi v. K N Modi* [1998 (3) SCC 573], *Bharat Bhushan Bansal vs. U.P. Small Industries Corporation Ltd.* [1999 (2) SCC 166] and *Bihar State Mineral Development Corporation v. Encon Builders (I)(P) Ltd.* [2003 (7) SCC 418]. In *State of Orissa v. Damodar Das* [1996 (2) SCC 216], this Court held that a clause in a contract can be construed as an 'arbitration agreement' only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well settled principles in regard to what constitutes an arbitration agreement :

(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and an willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility

of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) Even if the words 'arbitration' and 'arbitral tribunal (or arbitrator)' are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are : (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the Private Tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to Arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement.”

14. In the matter of ***Solaris Chem Tech Industries Ltd Vs Assistant Executive Engineer Karnataka Urban Water Supply and Drainage Board & Anr.*** reported in **2023 INSC 916**, the Hon’ble Apex Court held as follows:-

“**18.** Sub-section (1) of Section 7 indicates that an arbitration agreement is an agreement by parties to submit to arbitration “all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not”. It is well settled that in determining whether there is an arbitration agreement, the terms of the contract between the parties must be read as a whole. The 1996 Act does not prescribe a certain form of an arbitration agreement. The use or the absence of the word ‘arbitration’ is not conclusive and the intention of the parties to resolve the disputes through arbitration should be clear from the terms of the clause. In *Jagdish Chander vs Ramesh Chander*, the Court summarised the relevant factors for determining whether an agreement is an arbitration agreement within the meaning of S. 7 of the 1996 Act. The Court held:

“(ii) Even if the words “arbitration” and “Arbitral Tribunal (or arbitrator)” are not used with reference to the process of settlement

or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.” (emphasis added).”

15. Under such circumstances, this Court holds that in view of the existence of the arbitration clause, invocation thereof, as also on the ground that claims cannot be prima facie held to be ‘deadwood’. The application should be allowed.
16. Mr. Debjit Mukherjee, learned Advocate, Bar Association, shall act as the learned Arbitrator and arbitrate upon the disputes between the parties.
17. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
18. The learned Arbitrator shall fix the remuneration in terms of the Schedule of the Act.
19. AP-COM/181/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)