

ORDER

OD-2

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/47/2025

MD. AFRIDI

VS

APAKE COMMERCIAL PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 6th May, 2025.Appearance:

Mr. Oishik Chatterjee, Adv.

Mr. Joydeep Das, Adv.

...for petitioner.

Mr. Soumabha Ghose, Adv.

Ms. Tiana Bhattacharya, Adv.

Mr. PushanKar, Adv.

... for respondent.

1. This is an application for appointment of a learned arbitrator, for adjudication of a dispute which arose out of a Term-sheet cum Agreement for Sale dated January 30, 2020. Clause 3.2 of the said agreement contains an arbitration clause. All disputes arising out of or relating to the agreement or any document executed pursuant thereto, shall be referred to the sole arbitrator Mr. Umesh Kyal. Disputes arose between the parties. By a notice dated September 12, 2023, the petitioner invoked arbitration through his learned Advocate. The respondent replied on February 7, 2024. As the parties were not ad idem on the nomination of the learned arbitrator, this application has been filed.

2. Mr. Ghose, learned Advocate for the respondent submits that, the agreement was entered into in January 2020 and the invocation was made in September 2023. The invocation was beyond three years from the date when the cause of action to invoke arbitration arose. It is further submitted by Mr. Ghose that, the notice issued under Section 21 of the Arbitration & Conciliation Act, 1996 was not a proper invocation.
3. Admittedly the parties entered into the Term Sheet cum Agreement for Sale. The agreement was with regard to purchase of several plots of land, in Mouza Jamalpara, Police Station Rajathat, District 24 Parganas (North). At the time of execution of the agreement, the petitioner paid an amount of Rs.10 lakhs towards advance. The cheque was duly encashed. It is contended by the petitioner that due to the covid pandemic there was no further development. Once the situation was normalized, the petitioner approached the respondent for conclusion of the contract in terms of the agreement. The petitioner also filed an application under Section 9 of the Arbitration & Conciliation Act, 1996 for interim reliefs. The disputes continued and could not be settled amicably. The petitioner alleged that the respondent did not perform his part of the contract, although the petitioner was willing to do so. A notice invoking arbitration was issued. The named arbitrator, as per the agreement, was again nominated by the petitioner. The intention of the petitioner to refer all disputes to arbitration, is available from the notice. The petitioner referred to the arbitration clause in the agreement and proposed to refer

the dispute to the named arbitrator. The petitioner requested the respondent to clarify its stand with regard to appointment of Mr. Umesh Kyal, the named Arbitrator.

4. By a letter dated February 7, 2024, the respondent informed the petitioner that as per clause 2.5 of the agreement, the petitioner was required to make payment within six months from the execution of the agreement. The period of six months expired on 20.09.2020. The sale was to be completed within six months from execution, unless the period was mutually extended. As there was no extension of the period for performance of the said agreement, the agreement stood automatically terminated by efflux of time. The fact that there is an existing dispute between the parties, cannot be ruled out. The exclusion of time as per the decision of the Hon'ble Apex Court between March 15, 2020 and February 28, 2022 should be available to the petitioner while computing the period of limitation for invocation of the arbitration clause, in my prima facie view.. Moreover, objections as to limitation, arbitrability, admissibility of claims etc. must be raised before the learned Arbitrator.
5. This Court finds that, there is an arbitration clause and the disputes cannot be said to be ex facie time barred.
6. Accordingly, the application is disposed of, by appointing Mr. Ayan Dutta, learned Advocate (Mob. 98744 87022) to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

7. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.
8. All issues and objections raised by the respondents, shall be decided by the learned Arbitrator.
9. The observations made hereinabove, are tentative and only for the purpose of disposal of this application. Affidavit of service is taken on record.
10. AP/47/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)