

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/396/2025
ARINDAM MUKHOPADHYAY
VS
KAMAL KUMAR RAHA AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21th MAY, 2025.

Appearance:

Mr. Surojit Dasgupta, Adv.
Mr. Rahul Chakraborty, Adv.
Ms. Samma Parvin, Adv.
... for petitioner.

Mr. Sarosij Dasgupta, Adv.
Mr. Sidharta Basu, Adv.
... for respondent nos. 1 & 2

1. Affidavit of service is taken on record.
2. This is an application for appointment of an arbitrator in terms of clause 17 of the deed of partnership executed on July 20, 2020. The petitioner is one of the partners. The respondents are also partners of the firm. The firm is an unregistered firm. Clause 17 of the deed of partnership is set out below:-

“That in case of any dispute between the partners in respect of any other matter which cannot be resolved amongst themselves shall be referred to Arbitrator (s) as per the provisions of the Arbitration Act, as may be in force from time to time.”

3. Disputes arose with regard to non-furnishing of accounts and the allegation is that the respondents have been siphoning off the profits. The petitioner invoked arbitration by a learned advocate's notice dated

January 6, 2025, which was duly received by the respondents. The disputes have been elaborated in the said notice. The genesis of the dispute is available from the contents of the notice. The financial transactions which were not approved by the petitioner have been discussed. Allegations of misappropriation have been made. The petitioner intended to dissolve the partnership with immediate effect. Reference was made to paragraph 19 of the partnership deed dated July 20, 2020. The respondents replied to the said notice and suggested names of two arbitrators with the proposal that one may be appointed to adjudicate the disputes between the parties. The names were given pursuant to the request made by the petitioner.

4. Mr. Sarosij Dasgupta, learned advocate for the respondents, submits that without dissolution of the partnership, suit for accounts would not lie. Hence, the suit was barred under Section 48 of the Indian Partnership Act, 1932. Without asking for dissolution, the petitioner cannot ask for reference of the dispute relating to accounts to be arbitrated by a private tribunal. It is further contended that when a partnership firm was unregistered, a suit inter se the partners for accounts, was not maintainable.
5. Both the parties have relied on the decision in ***Prabhu Shankar Jaiswal v. Sheo Narain Jaiswal & Others*** reported in **(1996) 11 SCC 225**. The Hon'ble Apex Court held as follows:-

“Hence where arbitration is sought under the arbitration clause in a partnership deed of an unregistered firm for the purpose of dissolution

and accounts of the partnership firm, the partners can maintain all applications/petitions under the Arbitration Act for the purpose of enforcing their right to secure dissolution and accounts of the partnership firm through arbitration.”

6. Having heard learned advocates for the respective parties, this Court finds that there is existence of an arbitration clause. Parties had agreed to refer all disputes arising out of the partnership business, apart from the disputes relating to interpretation of the clauses of the said deed, to a sole arbitrator. The objections of Mr. Sarosij Dasgupta, learned advocate for the respondents, are with regard to arbitrability of the dispute. The law is well settled that, all questions with regard to arbitrability, admissibility, limitation etc. are to be decided by the learned arbitrator. The respondents are at liberty to raise all objections before the learned arbitrator.
7. Under such circumstances, the application is allowed. This Court appoints Mr. Shuvasish Sengupta, Advocate, Bar Library Club, 1st Floor, High Court, Calcutta, as the learned arbitrator, to arbitrate upon the disputes 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.
8. The application is disposed of.

(SHAMPA SARKAR, J.)