OCD 22 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AP-COM/516/2025
NATURALS DAIRY PRIVATE LIMITED
VS
RESPONCE RENEWABLE ENERGY LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 30th June, 2025

Appearance:-
Mr. Debnath Ghosh, Sr. Adv.
Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Akanksha Chowdhury, Adv.
...for petitioner

Mr. Abhrajit Mitra, Sr. Adv.
Ms. Noelle Banerjee, Adv.
Mr. Altamas Alim, Adv.
Ms. Jayshu Ghosh, Adv.
Ms. Priyanshi Bynewala, Adv.
...for respondent

The Court :- This is an application for appointment of a learned Arbitrator. The disputes arose out of a Share Subscription and Shareholders Agreement dated September 5, 2025.

The respondent had raised a dispute with regard to breach of the conditions of the said agreement, more particularly, Clause 2.3 thereof.

The respondent had raised the dispute with regard to several breaches committed by the petitioner, especially clause 2.3 of the agreement, which provided that maximum of 39% of the total paid-up share capital of the company was to be allotted to the respondent on pro rata basis. It was further contended by the respondent that clause 12.2.5 of the agreement which permitted an authorised signatory of both the parties to operate the bank account, was also deliberately violated. A representative of the respondent was supposed to participate in all Board meetings, which was not followed. Clause 12.4 of the Agreement was also relied upon by the respondent to demonstrate that the capital expenditure of the petitioner, could not be undertaken without the approval of the Board. Alleging all such violations, an application under Section 9 of the Arbitration and Conciliation Act was filed before this Court by the respondent.

On April 30, 2025, an order was passed by this Court directing that, the operation of the bank account maintained with the Punjab National Bank, SSI Branch, Patna, shall not be permitted unless a minimum of Rs.13 Crore was maintained in the account. The respondent's right emanated from the investment for an amount of Rs.13 Crore in the Ethanol Division of the petitioner.

The said interim order was sought to be vacated by an application filed by the petitioner. On May 20, 2025, upon hearing the parties, this Court had observed that the investment by the respondent was not in dispute, but the injunction on the designated account would bring the business to a standstill. The said account was the Trust and Retention account. Thus, the interim order was vacated by the Court with further directions upon the respondent to comply with clauses 2.1 and 2.3 of the Agreement, by extending a maximum of 39% of the total paid-up share capital which was to be allotted to the petitioner on pro rata basis, to the extent of the investment made. Such compliance was directed to be completed within four weeks. The Court further directed that the petitioner's representative should be allowed to participate in the Board meetings, and that the said representative should be permitted to exercise all rights emanating from the agreement.

The application under Section 9 was accordingly disposed of. The order passed by this Court was kept alive for a period of 90 days.

The petitioner invoked arbitration by a notice dated May 16, 2025. The respondent invoked arbitration by a notice dated June 11, 2025. The existence of the arbitration clause is not in dispute. Clause 16 provides for settlement of disputes by arbitration.

Ms. Banerjee, learned counsel for the respondent, raises various objections and submits that apart from the parties who are before this Court, Hemant Kumar Das also signed the agreement on behalf of other shareholders and thus Hemant Kumar Das and other shareholders should also be bound by the arbitration clause. Mr. Ghosh, learned senior Advocate submits that the agreement was entered into by the companies. The issue is not whether the shareholders denied the agreement.

All questions are left open, to be decided by the learned Arbitrator. The law is well-settled that the issue of joinder, non-joinder, misjoinder or whether the shareholders are bound by the agreement, or not, shall be decided by the learned Arbitrator.

Under such circumstances, the application AP-COM No. 516 of 2025 is allowed and disposed of, by referring the disputes to arbitration. Mr. Swatarup Banerji, learned Advocate, Bar Library Club, is appointed as the sole arbitrator.

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.)

SN/JM.
AR(CR)