

OCD -25

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL JURISDICTION
ORIGINAL SIDE

AP-COM/524/2025
SMT ANITA GEORGE
VS
SHRI ASIS BANDYOPADHYAY AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 23rd July, 2025.

Appearance:

Mr. Ayan Kumar Boral, Adv.

.... for the petitioner

Md. Salahuddin, Adv.

Ms. Suchismita Karmakar, Adv.

...for respondent nos. 1 and 5

The Court: Affidavit of service is taken on record.

Despite service none appears on behalf of the respondent nos. 2, 3 and 4. The respondent nos. 1 and 5 are represented by learned advocate.

The petitioner seeks appointment of an arbitrator for adjudication of the disputes between the partners on the basis of clause 26 of the reconstituted partnership deed dated 15th April, 2021. The said clause is quoted below :

“26. That any dispute or difference which may arise between the partners or their heirs and representative or between the firms and a partner with regard to the construction, meaning and effect of this Deed or respecting accounts, profits or losses of the business of the firm or the rights and liabilities of the partners hereunder or the dissolution or winding up of the business or any

other matter relating to the firm shall be referred to arbitration and this shall be deemed to be the submission and/or reference to the Arbitrator of the procedure for appointment of the Arbitrator within the meaning of the Arbitration and Conciliation Act, 1996 including any Statutory modification thereof.”

The petitioner claims to be a partner with 1/6th share. It is submitted that, the profits and losses were also to be shared in the ratio of 1/6th each and remuneration of Rs. 12,000/- per month was to be received by the partners. In terms of the clauses of the said partnership deed, the petitioner was entitled to receive a claim of Rs. 14,19,207.72 along with interest. Demands were raised on various occasions, but payment was not made. Accordingly, the petitioner invoked arbitration by letter dated April 24, 2025. The dispute remains between the parties. Under such circumstances, it is prayed that the dispute be referred to arbitration in terms of clause 26.

Md. Salahuddin, learned advocate for respondent nos. 1 and 5 submits that petitioner was not paid her remuneration because she was not an active partner and did not participate in the business. Under the terms of the partnership and Section 40(b) of the Income Tax Act, 1961 she was not entitled to any remuneration. It is submitted that under the said original deed of partnership, the partner was required to attend the business of the firm diligently. The question of paying the petitioner does not arise.

The contentions of Md. Salahuddin are matters of fact. These issues have to be proved by evidence. Whether or not the petitioner is entitled to any

remuneration and pray for other benefits as a partner, must be decided by the learned arbitrator. The arbitrator is the ultimate authority to determine the authenticity of the claims of the petitioner.

Under such circumstances, the application is disposed of by appointing Mr. Shahjahan Hossain, learned advocate (M-9831221492, 9339722619) to arbitrate upon the disputes between the parties. 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 Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

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