

ORDER

OCD-9

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/578/2025
SRI RATAN CHAKRABORTY
VS
SRI MRITUNJOY BHANJA CHOWDHURY AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 30th July 2025.

Appearance:

Mr. Siddhartha Banerjee, Adv.
...for petitioner.

Mr. Prosenjit Barman, Adv.
...for respondent No. 1.

Mr. Soumajit Majumdar, Adv.
Mr. Amartya Basu, Adv.
...for respondent Nos. 2 to 4.

1. The respondents are at liberty to file Vakalatnama within a week.
2. This is an application for appointment of an arbitrator in terms of clause 5(D) of the Joint Venture agreement dated February 28, 2022. The clause provides that in the event of any misunderstanding or communication gap, all the parties at first shall try to settle the dispute amicably and then shall approach the arbitrator for resolution of the dispute.

3. In my opinion, this is an arbitration clause. The intention of the parties to settle the dispute amicably, failing which reference to an arbitrator for settlement of the dispute shall be made, is available.
4. Mr. Barman, learned advocate for the respondent No.1 raises an objection with regard to existence of the agreement. According to Mr. Barman, the pages of the agreement did not contain signatures of the parties. Those were changed. The said agreement was an unregistered document. He further submits that the notice invoking arbitration was not in proper form. No clear request for appointment of an arbitrator had been made.
5. This Court finds from the records that there is an arbitration clause in the joint venture agreement and the notice invoking arbitration provides that either the respondent should try to settle the matter and in the event the respondent does not show any interest in amicable settlement, the petitioner shall have no other option but to proceed to nominate and appoint an arbitrator for resolution of the dispute. Paragraph 4 of the said invocation letter is quoted below:-

“That if you are found to be or indifferent in resorting to such recourse of amicable settlement of dispute, in terms of the agreements my Client shall have no other option but to proceed to nominate and appoint an Arbitrator to tide over the situation and to resolve the dispute which has been occurred upon and canvassed as per you arbitrary, illegal and highhanded activities as stated earlier.

So, you are hereby requested on behalf of my Client to take note that my Client doth hereby express his intention to get the dispute resolved

through Arbitrator in the event of your failure to proceed for amicable settlement and oblige.”

6. The letter clearly indicates that the petitioner requested the respondent to take note that the petitioner expressed his intention to get the dispute resolved by an arbitrator. It is well settled that the notice invoking arbitration must indicate the intention of the party issuing the notice, to refer the dispute to arbitrator. There is no particular form for the said notice. A single notice can also be a request for settlement and in the alternative an invocation with an express request for reference. Under such circumstances, the objection of Mr. Barman with regard to the invocation is not accepted.
7. The other issues raised by Mr. Barman with regard to inadmissibility of the unregistered joint venture agreement and changes made in the said agreement unilaterally, must be decided by the learned arbitrator, on evidence. The Court finds that the parties signed in the last page of the agreement. The respondent no. 1 does not deny the signature in the last page of the agreement. All that the respondent no. 1 objects to is that the pages in between have been changed and clauses favourable to the petitioner have been inserted. The allegation has to be proved by evidence. Under such circumstances, the referral court is not required to go into the objections.

8. All issues with regard to the jurisdiction of the learned arbitrator, arbitrability of the dispute, admissibility of the claim and validity of the document in question shall be raised before the learned arbitrator. Whether the respondent Nos.2 to 4 are necessary parties to the arbitral proceeding is also a matter left to be decided by the learned arbitrator.
9. This Court appoints Mr. Satadeep Bhattacharyya (Mobile: 9830138096), Advocate, as an 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 remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.
10. The application is disposed of.

(SHAMPA SARKAR, J.)