OCD 1

ORDER SHEET
AP-COM/776/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

SHREEN DEVELOPERS PRIVATE LIMITED
VS
MOAHAMMAD ARIF

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 18th November, 2025.

Appearance:
Mr. Arik Banerjee, Adv.
Mr. Shaunak Ghosh, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
. . .for the petitioner.

Mr. Tarique Quasimuddin, Adv.
Ms. Meena Shabnam, Adv.
. . .for the respondent.

The Court:

1. This is an application for appointment of an Arbitrator in terms of Clause 18 of the deed of partnership dated 18th June, 2015. The petitioner claims that, both parties as partners agreed to carry on the business of construction. Allegedly, the parties entered into the partnership agreement on 18th June, 2015. The respondent was already carrying on a business of construction, as a sole proprietor of the firm, Ibrahim Constructions. The respondent, as the sole proprietor, had entered into a joint venture/development agreement dated December 1, 2011, with the owners of the premises situated at

premises no.108, 109 and 110 (Old) Bowbazar Street, presently known as Bipin Behari Ganguly Street. The three premises have been amalgamated into premises no.108, B.B. Ganguly Street, Police Station - Muchipara, Kolkata.

2. Pursuant to the development agreement dated December 1, 2011, the firm Ibrahim Construction which was the sole proprietorship of the first partner/respondent, obtained a sanction from the Kolkata Municipal Corporation for the building.

3. The partnership deed provided that the respondent invested and incurred expenses to the tune of Rs.27 lakhs. The petitioner was also carrying on business of similar nature in its individual capacity and the parties agreed to join hands to carry on the ongoing construction as per the development agreement entered into between the respondent and the owners of the land. It is contended that the petitioner had also invested substantial amount. The parties reduced the terms and conditions of the partnership in relation to the development agreement into various terms and conditions. Some of which are quoted below:

> "*4. NATURE OF BUSINESS:*
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> *That the Business of the partnership firm shall be that of Construction, promotion and development of lands and Buildings and/or such other business as may be decided by the partners from time to time. The said Development Agreement dt.01-12-2011 & all other documents, arrangements, agreements etc. for the said property at premises no.108, B.B. Ganguly Street, P.S. Muchipara, Kolkata – 700012 shall be now*

deemed to be belonging to and in the name of the Partnership firm.

5. MANAGEMENT AND CONDUCT OF BUSINESS:

The business of the partnership shall be wholly carried on, managed and conducted by all the parties who shall at all times during the partnership diligently and faithfully employ themselves in and about the business of the partnership, and carry on, manage and conduct the same for the greatest advantage of the partnership. Each Partner shall be just and faithful to the other partners and at all times give full information and explanation of all matters relating to the affairs of the partnership and forthwith pay all moneys, cheques and negotiable instrument received on account of the firm into the firm's bank or to the Partnership account.

6. REMUNERATION TO PARTNERS :

The partners shall be entitled to remuneration in their profit sharing ratio and the total remuneration payable will be calculated at the end of every financial year as per the provisions of Income Tax Act, 1961.

a) The distributable remuneration shall be credited to the accounts of the parties hereto in their Profit and Loss sharing ratio.

b) After deduction of the aforesaid distributable remuneration and firm's Income tax the balance shall be credited to the account of partners in their profit and loss sharing ratio.

7. CAPITAL :

That such contribution and investment towards the capital will be arranged by the partners as and when required in their profit sharing ratio for the smooth running of the business of the partnership firm or as mutually agreed amongst the partners from time to time. Out of total investment of Rs.27,00,000/- by the First Partner for the said Property, Rs.24,00,000/- shall be treated as Initial Capital of First Partner and Rs.3,00,000/- shall be reimbursed to him by the Second Partner as his (Second Partner's) Initial Capital. However, all further investment for Development of the said Property as well as eviction costs of the three tenanted shops shall be arranged, contributed and brought in by the Second Partner as and when required towards his Capital.

8. …

9. PROFIT AND LOSS SHARING RATIO :

That at the end of each accounting year starting from 1^{st} April and ending on 21^{st} day of March, the accounts shall be closed and a Profit and Loss Account shall be drawn up after meeting all the necessary costs, charges and expenses incurred in partnership firm and the profit or loss as ascertained shall be divided or borne by the partners in the equal sharing ratio i.e. 50% to the First Partner and 50% to the Second Partner.

10. …

11. …

12. …

13. …

14. …

15. Any party hereto shall not, without the consent of the other-

a. submit any dispute with any other person to arbitration or com-promise or relinquish the claim,

b. withdraw any suit or legal proceedings filed by the Firm.

c. admit any liability of the Firm.

d. acquire or dispose of any immovable or moveable property, except the stock, in trade in the ordinary course of business of the Firm.

e. enter into partnership or other business unilaterally with any other person.

f. assign or transfer his or its share or any interest in the Firm.

g. admit any person as a partner of the firm,

h. borrow any moneys for or in the name of the firm, or create any security or change on the assets of the firm

i. enter into any contracts except contracts in the regular course of business of the Firm,

j. stand as a guarantor or security for any person in the name of the firm or for and on behalf of the firm"

4. It is pertinent to mention that the partnership agreement contains a clause with regard to settlement of dispute by arbitration. Clause 18 is quoted below:

> "*18. ARBITRATION :*
>
> *That any dispute or differences that may arise between the partners or their representatives of heirs with regard to the construction of the instrument of regarding the accounts, profit and losses of business of the rights and liabilities of the partners or the dissolution or winding up of the business or any other matter relating to firm, shall be referred to arbitration in terms of the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification thereunder."*

5. It is alleged that disputes arose when the petitioner came to know the respondent had been representing to the world that he alone had developed the property. The respondent entered into a supplemental agreement with the landowners, thereby, modifying the development agreement in a clandestine manner.

6. The petitioner had approached this Court for interim protection on various grounds. The Court directed that the construction work will continue. However, status quo with regard to the developer's share shall be maintained to the extent that, the said developer's share shall not be alienated or transferred to any third party for a period of three months. If any bookings had already been taken, those shall not be disturbed, but final handover shall not take place for a period of three months.

7. Mr. Banerjee, learned advocate for the petitioner submits that in view of the disputes involved the application should be allowed and a sole Arbitrator should be appointed.

8. Mr. Quasimuddin denies the allegations. He submits that the partnership deed was tampered. It was a forged document. Criminal investigations are pending and the petitioner has applied for anticipatory bail. Be that as it may, the deed of partnership contains an Arbitration Clause. The learned Arbitrator is the sole adjudicator as to the issue of jurisdiction and arbitrability of the disputes. The questions raised by Mr. Quasimuddin are on arbitrability of the dispute in view of the allegation of tampering of the partnership deed as also, complicated issues relating to fraud and forgery. The learned Arbitrator can pass all orders including an order permitting an hand-writing expert to examine the signature of the parties in the deed. Moreover, it is also open to the Arbitrator to decide whether the facts involved were so complicated in view of the pending criminal cases that, he lacked jurisdiction to decide such complicated issues.

9. All questions are left open to be decided, including the questions of jurisdiction, admissibility, mis-joinder, non-joinder, limitation etc.

10. Under such circumstances, the application is disposed of by appointing Mr. Dhruba Ghosh learned Senior Advocate (Mob. No. 9831095116), as the Arbitrator, to arbitrate upon the disputes between the parties.

11. 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.

12. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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