OCD 8

ORDER SHEET
AP-COM/786/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

MOHAN KUMAR SHAW
VS
SANJIB KUMAR SHAW AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th November, 2025.

Appearance:
Mr. Shashwat Nayak, Adv.
Mr. Shoham Sanyal, Adv.
Mr. Sumit Biswas, Adv.
Ms. Rajashree Bhowmick, Adv.
...for the petitioner

Mr. Aloke Chatterjee, Adv.
...for the respondent nos.1 and 2

Mr. Arghya Mullick, Adv.
...for the respondent nos.3 and 4

The Court:

1. Affidavit of service is taken on record.

2. Despite service on several occasions, none appears on behalf of the respondent nos.5 and 6. Accordingly, the matter proceeds ex parte against the said respondents.

3. The dispute between the parties arose out of a Modified Reconstruction of Deed of Partnership dated April 6, 2022. The arbitration agreement is at clause 21 of the said deed. It provides as follows:

> *"**21) DISPUTES AND DIFFERENCES:** In the case of disputes and differences among the Partners, the matter may be settled amicably or may be referred to arbitration, one to be appointed by each Party to the dispute in accordance with the provisions of the Arbitration and Conciliation Act, 2021 (As amended up-to-date) or any other subsequent enactment or modification thereof and/or that purpose this clause shall be treated and construed as an agreement of reference for arbitration".*

4. The petitioner as one of the partners of the firm wanted to resign and he prayed for rendition of accounts. The respondents did not allow the petitioner to resign and it is submitted by the learned advocate for the respondents that there are several disputes between the parties which need to be resolved and the petitioner cannot be permitted to resign unilaterally without such disputes having been resolved. The notice invoking arbitration was issued by the petitioner on June 7, 2025.

5. Under such circumstances, this Court is of the view that the application should be allowed. All claims and counterclaims of the parties are left open to be decided by the learned arbitrator.

6. Upon hearing the learned advocates for the respective parties, it appears that there are surviving disputes. The dispute resolution clause is in existence. Parties had agreed to refer the dispute to arbitration, by each choosing an arbitrator. The parties had failed to appoint the arbitrator as required by the clause. Moreover, the clause provides for even

number of arbitrators, which is contrary to law. The mechanism under Clause 19 of the agreement has thus failed. Both the learned advocates for the respective parties submit that the Court may refer the dispute to a sole arbitrator.

7. Under such circumstances and upon recording the submissions of the learned advocates, this Court disposes of the application by appointing Mr. Sourav Sen, Senior Advocate (Mobile No.98312 51607), 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.

(SHAMPA SARKAR, J.)

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