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

AP-COM/809/2025
SHRACHI EDUCATIONAL SERVICES LLP
VS
PAILAN EDUCATIONAL TRUST AND OTHERS

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

Appearance:
Mr. Swarajit Dey, Adv.
Mr. Saptarshi Kar, Adv. ...for petitioner.

Mr. Subhankar Nag, Adv.
Mr. Aritra Shankar Ray, Adv. ...for respondents.

The Court: The petitioner prays for appointment of an Arbitral Tribunal in terms of clause 18.3 of the Operation and Management Agreement entered into between the parties on July 7, 2024. According to the petitioner, the respondents had misled the petitioner into agreeing to operate and manage the Pailan World School under the respondent, trust. The petitioner, upon coming to know that the school premises was not free from encumbrances, but was the subject matter of a SARFAESI proceeding sought for clarification.

A complaint was lodged with the Bishnupur Police Station, Diamond Harbour Police District, after there was an altercation outside the school premises between the representatives of the petitioner and the trustees. The petitioner was allegedly threatened with dire consequences. It is further alleged that the respondents also refrained from disclosing that several litigations were pending over the property. When queries were made, the respondents failed to answer to such queries and intimidated the petitioner.

Under such circumstances, a notice of termination of the agreement was issued by the petitioner on June 4, 2025. The petitioner alleges that substantial investment had been made in good faith, but on account of the breach of the covenant in the agreement, a notice of termination was issued under clause 14 thereof. Allegedly, the loss of reputation and the loss of business suffered by the petitioner accrues to more than Rs. 6 crores. The respondents replied to the said notice on July 2, 2025, by making counter allegations. The respondents has various complaints with regard to the petitioner's failure to fulfill its obligations under the agreement. Thereafter, a notice invoking arbitration was issued by the petitioner to the respondents and the respondents replied to the same, by denying the request to refer the dispute to arbitration on the ground that an attempt at amicable settlement should precede the reference to arbitration.

Mr. Nag, learned advocate for the respondents submits that until and unless the parties sit together and try to resolve the dispute amicably, the prayer for referring the dispute to arbitration made before this court is premature.

Having considered the submissions and the records, the Court finds that allegations of cheating, misrepresentation, criminal intimidation, assault, etc. have been levelled by the petitioner against the respondents and a complaint to that extent has been filed before the concerned police station. From the nature of allegations made by the petitioner and from the counter-allegations made by the respondents as to how the petitioner has committed breach of the contract, this Court does not find that amicable settlement is possible. Sending the parties to settle the matter at this stage, will be an empty formality. The dispute is alive. The notice invoking arbitration is available on record.

Under such circumstances, reference is made to the following decisions in support of the contention that, when the chance of amicable

settlement is bleak or impossible, the parties need not be relegated to a conciliation process:-

Visa International Limited vs. Continental Resources (USA) Limited reported in **(2009) 2 SCC 55** and ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited*** reported in **(2015) 13 SCC 610**.

In the decision of ***Visa International (supra)*** the Hon'ble Apex Court held as follows:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

In the decision of ***Demerara Distilleries Private Limited and Another v. Demerara Distillers Limited*** reported in **(2015)13 SCC 610**, the Hon'ble Apex Court held as follows:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically

and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration.”

It is submitted that the petitioner and the respondents consented to the appointment of a sole Arbitrator.

Upon recording such consent between the parties, the application is allowed by referring the dispute to arbitration. Mr. Ranjan Bachawat, learned Senior Advocate is appointed as the learned Arbitrator. This court has not gone into the allegations made by the parties. The parties are at liberty to raise all the points before the learned Arbitrator.

This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

AP-COM/809/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

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