

OCD 6

ORDER SHEET
AP-COM/920/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

NUOVE AND ANR.
VS
RUPAK PAUL

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

Appearance:
Mr. Anuj Singh, Adv.
Ms. A. Baid, Adv.
Mr. Aman Agarwal, Adv.
Mr. Shivam Chaturvedi, Adv.
Mr. Ashok Kumar Singh, Adv.
...for the petitioners

Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Deepan Sarkar, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Barnik Ghosh, Adv.
Ms. Meghla Das, Adv.
...for the respondent

The Court:

1. The petitioners have prayed for appointment of an Arbitral Tribunal to settle the dispute which arose out of a Partnership Agreement dated February 13, 2019. The parties are partners. The dispute allegedly arose when the respondent started to run a health care business under the name and style of 'NUOVE HEALTHCARE', as its sole proprietor. The contention of the petitioners is that, the business started by the

respondent was an infringement on the intellectual property and digital assets of the partnership firm. The partnership firm was already running a healthcare business in the name of 'NUOVE'. When the respondent started operating his business, due to similarity in the name, patients were diverted from NUOVE to NUOVE HEALTHCARE. The respondent could not be permitted to run a competitive business while remaining a partner of the said firm.

2. The petitioners filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned Commercial Court at Rajarhat. The learned Judge restrained the respondent and/or his men, agents from operating and/or continuing the competing business in any form or manner, including any business under the name and style of NUOVE HEALTHCARE. It is submitted that the ad interim order of injunction has been extended from time to time. The petitioners invoked arbitration vide email dated July 25, 2025. A notice invoking arbitration was also sent by registered post. It is contended by Mr. Singh that the postal receipt and the track report indicate that there has been sufficient compliance of Section 3(1)(b) of the said Act and Section 27 of the General Clauses Act. Hence, prayer is made that the matter may be referred to an arbitral tribunal as per the clause.
3. Clause 21 of the said Partnership Agreement provides that disputes and differences arising between the partners in respect of accounts, profits or losses, rights or liabilities, dissolution or winding up etc. shall be referred to a sole arbitrator and if the parties disagree, then the dispute

can be referred to two or more arbitrators, according to the number of partners of the firm. One to be nominated by each party.

4. Mr. Jishnu Chowdhury, learned senior advocate for the respondent submits that notice invoking arbitration was not properly served. Without delivery of such notice, an application cannot be filed before the Court, under Section 11(6) of the Arbitration and Conciliation Act. The date of issuance of the notice invoking arbitration is relevant in order to compute the period of limitation. He contends that the agreement provides that all communications between the partners or otherwise, shall be made at the registered office of the firm. The other issues raised by Mr. Chowdhury are on the merits of the claim of the petitioner. Such objections are all left open, to be agitated before the learned arbitrator. The allegations against the respondent are deemed to be not accepted. The learned Arbitrator will decide all such questions.
5. A supplementary affidavit has been affirmed by the petitioners to submit that a copy of the notice invoking arbitration was issued by email on July 25, 2025 at 6:38 PM. The postal receipt indicates that the said notice was addressed to the current address of the respondent. The postal track report indicates that the postal article had been duly stamped and posted. The postal article travelled from post office to post office. The last record is of Kankurgachi Sub Post Office and the respondent is under Sreebhumi Post Office. Section 3 of the said Act is quoted below:

“3. Receipt of written communications.—(1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority”

6. Section 27 of the General Clauses Act is quoted below:

“27. Meaning of service by post

Where any [Central Act] [*Substituted by A.O.1937, for "Act of the Governor General-in-Council.*] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

7. Any communication under the said Act shall be considered to be delivered if it appears that the postal authorities had sought to deliver the said at the address. In this case, it appears that the postal authorities had sought to deliver the article at the appropriate address but there is no indication as to whether the same was received by the respondent. It is not the duty of the petitioners to ensure delivery upon the respondent. The petitioners do not have any control over the post office. The duty of the petitioners was discharged, when the postal

article was addressed to the respondent duly stamped and submitted at the post office for service upon the respondent at the correct address.

8. Under such circumstances, there is no doubt that there has been sufficient compliance with regard to issuance of the notice invoking arbitration. It is also informed that the respondent also invoked arbitration. Thus, the fact that there is a dispute between the parties cannot be ruled out. Secondly, an email was also forwarded, involving the arbitration clause. The question of limitation does not arise, in this case because the dispute arose sometime in July, 2025 when the respondent obtained the GST registration to run the competing business.
9. In any event, limitation will have to be decided by the learned arbitrator in the facts and circumstances of this case.
10. Under such circumstances, the duty of the referral court being only to satisfy itself with regard to the existence of the arbitration clause, the application is allowed. The clause provides that the dispute shall be first referred to a sole arbitrator and in case of disagreement, each partner can appoint an arbitrator. In any event, the above mechanism has failed. Thus, the dispute is referred to a sole arbitrator as provided in the first limb of the dispute resolution clause.
11. Under such circumstances, the Court appoints Hon'ble Justice Subrata Talukdar, former Judge of this Court, as the 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 own remuneration as per the Schedule of the Act.

12. AP-COM/920/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)