

OCD -3

ORDER SHEET

AP-COM/1078/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE

LGW INDUSTRIES LIMITED

VS

MET TECHNOLOGIES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 27th January, 2025.

Appearance:

Mr. AryakDutt, Adv.

Mr. Dipankar Das, Adv.

Mr. RajashreeBhowmick, Adv.

.... for the petitioner

The Court:Affidavit of service is taken on record. The service through speed post was not satisfactory. However, the Court took note of service by e-mail. Under such circumstances, the petitioner was directed to effect substituted service by making insertions in newspapers. Insertions in the Time of India and Ei Samay have been made. Despite such substituted service, none appears on behalf of the respondent. The court has to proceed ex-parte. This is an application for appointment of an arbitrator.

The petitioner entered into a leave and license agreement with the respondent for a period of 11 months. Such Leave and License agreement was

renewed from time to time and lastly on September 24, 2021. It is submitted that the licensed premises was attached by the Enforcement Directorate, pursuant to an investigation against the respondent. However, the petitioner has a claim of more than Rs. 73 lakhs together with interest at the rate of 18% on account of unpaid license fees. The monthly license fee was Rs. 9,89,350/- together with applicable GST, maintenance, electricity charges and other charges. Steps were not taken for renewal of the Leave and License. The leave and license agreement stood terminated. Notice was issued by the petitioner. The petitioner approached the respondent. The respondent did not pay the sum demanded. Accordingly, a notice invoking arbitration was sent on December 2, 2023 and again by e-mail on September 30, 2024.

The fact that Leave and License agreement had been entered into between the parties, is not in dispute. The same was renewed from time to time and lastly on 24th September, 2021. The existence of an arbitration clause is not in dispute. The invocation of arbitration is not in dispute. The dispute is with regard to the claim for unpaid license fees and it is fairly submitted that the licensed premises is now attached by the Enforcement Directorate. Hence, no claim for recovery of possession has been made.

It appears that an arbitral tribunal comprising of three members, is required to arbitrate upon the dispute between the parties. The dispute resolution clause states as hereunder:-

“52:-Any dispute between the parties arising out of or connected with this Agreement of Leave and license shall be referred to and finally determined by arbitration, each party shall be entitled to nominate one arbitrator and both the arbitrators nominated by both parties shall jointly appoint a third arbitrator as Chairman. The Arbitration shall be held as per the provisions of the Arbitration and Conciliation Act, 1996 and shall be held in Kolkata. The arbitral award shall be final and binding upon the parties.”

The petitioner has already nominated its arbitrator, namely, Mr. Raj Mohan Chattaraj, learned Advocate, Calcutta High Court. Thus, Mr. Raj Mohan Chattaraj will act as the petitioner’s nominee. Mr. V.V.V. Shastri, learned advocate will act as the respondent’s nominee and both the learned arbitrators shall nominate the third arbitrator, who shall be the presiding arbitrator (Chairman as per the clause). The learned arbitrators shall make necessary disclosure as per Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrators shall fix their remuneration in terms of the schedule of the said Act.

All points are left open. The parties shall raise all points before the arbitral tribunal.

The application is accordingly disposed of.

(SHAMPA SARKAR, J.)