

OCD-9

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/117/2026

THE AGRI HORTICULTURAL SOCIETY OF INDIA
VS
ENKON PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 1st April, 2026.

Appearance

Mr. Shuvashish Sengupta, Adv.
Mr. Kaustav Chunder, Adv.
Ms. Jayeeta Sengupta, Adv.
Mr. Tiyaasha Chatterjee, Adv.
...for the petitioner

Mr. Dipanjan Sinha Roy, Adv.
...for the respondent

The Court:- The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator.

Learned counsel for the petitioner submits that the parties had initially entered into an agreement dated 8th October, 2014, whereby the respondent was permitted to erect an advertisement hoarding and display commercial advertisements on a structure measuring approximately 6000 sq. ft. situated along the boundary walls of Belvedere Road and Alipore

Road, being property belonging to the petitioner. The said agreement was for a period of three years and expired in the year 2017.

It is further submitted that the parties thereafter entered into a fresh agreement dated 1st November, 2021, in respect of a separate commercial arrangement for display of hoardings, which also encompassed the subject matter of the earlier agreement.

Learned counsel for the petitioner draws the attention of this Court to Clause 9 of the agreement dated 1st November, 2021, which contains an arbitration clause, which is reproduced herein:-

“i) Any dispute or difference arising out of and under these presence including as to the interpretation of the terms and conditions, or non-compliance or non-payment, the same shall be resolved mutually and Amicably by both the parties.

ii) If it cannot be so resolved amicably the same shall be referred to the Arbitration under the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification thereof in force. The Arbitration shall be held at Kolkata and it shall be conducted in English language only.

iii) The Courts at Kolkata alone shall have jurisdiction to try and entertain disputes between the parties arising under these presents including arising from the Arbitration proceedings.”

The existence of the said arbitration agreement is not disputed by the learned counsel for the respondent.

However, learned counsel for the respondent submits that the respondent has already instituted Title Suit No. 1282 of 2025 before the learned 1st Civil Judge (Senior Division) at Alipore, wherein an ad interim order of temporary injunction has been granted. It is further submitted that

an application under Section 8 of the Arbitration and Conciliation Act, 1996 is pending adjudication before the said Court, and, therefore, the present petition under Section 11 is not maintainable.

This Court has considered the submissions advanced by the learned counsel for the parties and perused the materials placed on record. The issue as to whether the pendency of a civil suit or an application under Section 8 of the Act bars the exercise of jurisdiction under Section 11 is no longer *res integra*.

Section 8(3) of the Arbitration and Conciliation Act, 1996 expressly provides that notwithstanding the pendency of an application under Section 8(1), an arbitration may be commenced or continued. The Hon'ble Supreme Court, in ***Vijay Kumar Sharma @ Manju v. Raghunandan Sharma @ Baburam & Ors., reported in (2010) 2 SCC 486***, has held that the pendency of proceedings before a civil court does not preclude the appointment of an arbitrator under Section 11 of the Act. The relevant portion of the said Judgment reads, *inter alia*, as follows:

“12. Having regard to the specific provision in Section 8(3) providing that the pendency of an application under Section 8(1) will not come in the way of an arbitration being commenced or continued, we are of the view that an application under Section 11 or Section 15(2) of the Act, for appointment of an arbitrator, will not be barred by pendency of an application under Section 8 of the Act in any suit, nor will the designate of the Chief Justice be precluded from considering and disposing of an application under Section 11 or 15(2) of the Act.

13. It follows that if an arbitrator is appointed by the designate of the Chief Justice under Section 11 of the Act, nothing prevents the arbitrator from proceeding with the arbitration. It also therefore follows that the

mere fact that an appeal from an order dismissing the suit under Order 7 Rule 11 CPC (on the ground that the disputes were required to be settled by arbitration) is pending before the High Court, will not come in the way of the appointment of an arbitrator under Section 11 read with Section 15(2) of the Act, if the authority under Section 11 finds it necessary to appoint an arbitrator. Therefore, the first contention of the appellant is liable to be rejected.”

In view of the aforesaid statutory provision and the law laid down by the Hon’ble Apex Court, the objection raised by the respondent with regard to maintainability cannot be sustained.

Since the agreement between the parties admittedly contains a valid arbitration clause and disputes have arisen between the parties, this Court is satisfied that a case has been made out for appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

Accordingly, this Court appoints Mr. Arnab Chakraborty, Advocate (Mob. No. 9830676096), as the sole arbitrator to adjudicate the disputes between the parties. The learned Arbitrator shall communicate his consent to the Registrar, Original Side, within a period of two week from the date of receipt of this order.

The appointment of the learned Arbitrator shall be subject to compliance with Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall be entitled to fix his remuneration in accordance with the Fourth Schedule to the Act, unless otherwise agreed between the parties.

The petitioner is directed to communicate a copy of this order to the learned Arbitrator forthwith for necessary compliance.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

S. De/gb.