OCD-15

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/154/2026

SHALIMAR PELLET FEEDS LIMITED
VS
SMT MAMTA DEY AND OTHERS

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 1st April, 2026.

Appearance:
Mr. Ayan Kumar Boral, Adv.
...for the petitioner

Mr. Shobhantanu Bhattacharyya, Adv.
Mr. Sagarmay Ghosh, Adv.
...for the respondent

The Court: At the time of dictating the order, learned Counsel for the petitioner started interrupting. This Court refrains from passing the order and will pass the order in the chamber. The present petition stands dismissed. Reasons to follow.

Learned Counsel, Mr. Ayan Kumar Boral, is warned from carrying out this kind of practice which is deprecated by this Court and this Court will be compelled to take necessary action if the same is repeated on the next occasion.

Due to the unconditional apology tendered by the petitioner, this Court refrains from making any further statements against the Counsel.

In Chamber

The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator for adjudication of the disputes between the parties.

Learned Counsel for the petitioner submits that the petitioner is engaged in the business of manufacturing poultry feeds and conducts such business across various parts of India through appointed dealers. It is submitted that Late Samir Kumar Dey was appointed as a dealer for sale of poultry feeds under the brand "Total & Total Eco", along with other products manufactured by the petitioner, in the District of Nadia pursuant to an agreement dated 7th December, 2015.

It is further submitted that, in the course of business transactions, a sum of Rs.59,51,434/- became due and payable by the said dealer to the petitioner. Sh. Samir Kumar Dey expired leaving behind the Respondents as his legal heirs (Respondent No. 1 and Respondent No. 2 &3 as his children). Upon the demise of the said dealer, the petitioner approached the present respondents, who are stated to be his legal heirs, being the widow and children of Late Samir Kumar Dey, seeking repayment of the alleged outstanding dues. However, the respondents denied any liability in respect thereof.

Consequently, the petitioner purported to invoke the arbitration clause contained in the agreement dated 7th December, 2015 by issuing a notice dated 20th September, 2025. As no response was received, the present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator.

Learned counsel for the petitioner submits that the present application is maintainable in law, inasmuch as the arbitration agreement contained in the agreement dated 7th December, 2015 does not stand extinguished upon the death of Late Samir Kumar Dey by virtue of Section 40 of the Arbitration and Conciliation Act, 1996, which expressly provides that an arbitration agreement shall be enforceable by or against the legal representatives of the deceased. It is contended that the respondents, being the widow and children of the deceased, are his legal representatives and have stepped into his shoes in respect of his estate, and therefore are bound by the contractual obligations, including the arbitration clause. Reliance is further placed on Section 2(1)(g) of the Act, which defines "party" to include any person claiming through or under a party, and it is submitted that the respondents, claiming through the deceased, fall squarely within the ambit of the said provision and are thus amenable to arbitration. It is further submitted that the liability in question arises out of commercial transactions and is not personal in nature, and therefore survives against the estate of the deceased, the extent whereof is a matter to be adjudicated on merits. At the stage of Section 11, this Court is only required to examine the existence of a valid arbitration agreement, which is admitted, and the question as to the extent of liability of the respondents or the estate inherited by them cannot be gone into at this stage and is required to be decided by the learned Arbitral Tribunal. Accordingly, it is submitted that the disputes are liable to be referred to arbitration and an arbitrator be appointed.

Upon consideration of the materials placed on record, this Court finds that the agreement containing the arbitration clause was executed solely between the Petitioner and Late Samir Kumar Dey. The present Respondents are admittedly not signatories to the said agreement and have been impleaded only in their capacity as the alleged legal heirs of the deceased. No material has been placed on record to prima facie demonstrate that the Respondents have either expressly or impliedly accepted, or otherwise had knowledge of, the arbitration agreement dated 7th December, 2015, purportedly entered into between the Petitioner and the deceased. While it is settled that an arbitration agreement may, in certain circumstances, bind legal representatives, such extension is neither automatic nor unqualified; it operates only to the extent that the estate of the deceased is duly represented and the obligations sought to be enforced are demonstrably referable thereto. In the present case, there is a conspicuous absence of any material to indicate that the Respondents were even aware of the alleged transaction or the proposed arbitral proceedings. A mere averment in the petition regarding service, without supporting proof, cannot suffice.

Section 21 of the Arbitration and Conciliation Act, 1996 unequivocally stipulates that, unless otherwise agreed, arbitral proceedings commence only upon receipt of a notice invoking arbitration by the respondent. This requirement is not merely procedural but is founded on principles of fairness and natural justice, ensuring that the party against whom claims are made is duly informed of the disputes, afforded an opportunity to respond, and enabled to participate in the process of appointment of an arbitrator in terms of the arbitration agreement. Compliance with Section 21 of the Arbitration and Conciliation Act, 1996 is, therefore, a condition precedent to the invocation of jurisdiction under Section 11 of the

Arbitration and Conciliation Act, 1996, as it is only upon failure of a party to act in accordance with such notice that the Court's jurisdiction is triggered ***(Advya Projects Pvt. Ltd. Vs Vishal Structurals Pvt. Ltd.*** reported as ***2025 (9) SCC 686)***.

This requirement assumes heightened significance where arbitration is sought to be initiated against legal heirs who were not signatories to the arbitration agreement, as such persons may have no prior knowledge of the underlying transaction. In such circumstances, strict proof of due and effective service of the notice invoking arbitration becomes imperative to ensure that they are not taken by surprise and are afforded a fair opportunity to respond.

In the present case, although the Petitioner claims to have issued a notice dated 20th September, 2025 under Section 21 invoking arbitration, no cogent proof of service of the said notice upon the Respondents has been placed before this Court. In the absence of such proof, it cannot be held that a valid request for reference to arbitration has been received by the Respondents, as contemplated under Section 21. The requirement of valid invocation being a jurisdictional precondition, the present petition is rendered premature. It is well settled that, in proceedings under Section 11, the Court must arrive at a prima facie satisfaction regarding the existence of a valid and binding arbitration agreement between the parties sought to be referred. In the facts of the present case, such foundational requirement remains unfulfilled, both on account of the absence of material demonstrating that the Respondents were put to notice of the alleged claims and due to non-compliance with the mandatory requirement of valid invocation of arbitration.

The question as to whether any liability of the deceased survives against the Respondents, and the extent thereof, may fall for consideration in appropriate proceedings; however, in the absence of a valid notice invoking arbitration, such issues cannot form the basis for a reference to arbitration. In view of the aforesaid, this Court is unable to record the requisite prima facie satisfaction for appointment of an arbitrator under Section 11 of the Act. Accordingly, the present application is dismissed. It is, however, clarified that such dismissal shall not preclude the Petitioner from taking appropriate steps in accordance with law, including issuance of a fresh notice in terms of Section 21 and proceeding thereafter, if so advised.

(GAURANG KANTH, J.)

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