

ORDER

OCD – 7

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/999/2025
IA NO: GA-COM/1/2026
NATURALS DAIRY PRIVATE LIMITED AND OTHERS
VS
AAWKINS TRACOM PRIVATE LIMITED AND ANOTHER

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 5th February 2026

Appearance:-

Mr. Kumarjit Banerjee, Advocate (VC)
Ms. Sanchari Chakraborty, Advocate
Ms. Avishikta Biswas, Advocate
... for the petitioners.

Ms. Noelle Banerjee, Advocate
Ms. Joyshree Ghosh, Advocate
Ms. Priyashi Jajoo, Advocate
... for respondent no.1.

Mr. Altamash Alim, Advocate
Mr. Akash Agarwal, Advocate
... for respondent No. 2.

1. AP-COM/999/2025 is an application for appointment of an arbitrator for resolution of disputes between the parties, which arose out of the agreement dated September 5, 2024.
2. The respondent No.2 has filed an application being GA-COM/1/2026, challenging the maintainability of AP-COM/999/2025, on the ground that the said respondent is neither necessary nor a proper party in the disputes involved between the petitioners and the respondent No.1. A prayer has been made to expunge the respondent No. 2. It is the specific case of Mr. Alim, learned advocate for the respondent No.2, that no notice

under Section 21 of the Arbitration and Conciliation Act, 1996 was issued to the respondent No.2 and there are no allegations against the respondent No.2. Mr. Alim submits that for this Court to refer a dispute to arbitration, there must be a subsisting dispute between the parties. Admittedly, neither the notice invoking arbitration nor the pleadings in AP-COM/999/2025, indicate that the petitioner has any kind of allegation whatsoever against the respondent No.2. In the absence of any such averments and in the absence of any direct allegation against the respondent No.2, the respondent No.2 should not be unnecessarily saddled with a litigation.

3. Learned advocate for the respondent No.1 also supports the case of Mr. Alim to the extent that the respondent No.2 did not have any role to play in the transaction between the parties and as such, the respondent No.2 was neither a necessary nor a proper party. The allegations which were subsisting with regard to change of composition of the shareholding and non-transfer of shares to the respondent No.2, are already subject matter of another reference and this Court has already appointed a learned arbitrator. Thus, the scope of the reference in this matter is limited to the dispute between the petitioner and the respondent No.1 with regard to the breach of covenants of the said agreement dated September 5, 2024 and non-payment of the money which was lent by the respondent No.1 to the respondent No.2 along with the interest thereon. A further dispute is with regard to recall of the loan amount which was agreed to be advanced to

the petitioner. Ms. Banerjee, further submits that a prior proceeding against the petitioner is already continuing before the National Company Law Tribunal, Kolkata and as such, the said application should be heard prior to reference of the instant dispute.

4. Admittedly, the petitioner and the respondents entered into the agreement dated September 5, 2024. The representative of the respondent No.2 (which is a company) signed the agreement. The covenants, representations and warranties by the borrowers i.e. the petitioners under clause 4.4 are as under:-

“4.4. The Borrower and the Shareholders further warrants and undertakes not to issue any shares of the Borrower to any person whatsoever and not to change the composition of shareholding of the Borrower without prior written consent of the Lender.”

5. Clause 5 of the said agreement dated September 5, 2024 deals with the events of default. Sub-clause (c) thereof is quoted below:-

“c. The Borrower is in breach or default of performance of any covenant, undertaking, conditions or any representation of warranty contained in the Agreement.”

6. Clause 5.2 of the said agreement provides an option available to the lender in case of an event of default, which is quoted below:-

“5.2. On the occurrence of an Event of Default, the Lender shall by written notice to the Borrower and/or the Shareholders demanding repayment of the Inter Corporate Deposit along with interest that may have accrued and is due, payable and outstanding by the Borrower to

the Lender within 30 (Thirty) days from the date of issuance of the written notice.”

7. The expression “parties” has been defined in the said agreement, as follows:-

“The Borrower, individual Shareholders, Corporate Shareholder and Lender are hereinafter individually referred to as “Party” and jointly as “Parties”. The individual Shareholders and the Corporate Shareholder are hereinafter collectively referred to as the “Shareholders”.”

8. Clause A at page 3 of the said agreement provides that the shareholders hold 68.28% of the paid-up share capital of the Borrower and they are in the management and control of the day-to-day affairs of the Borrower. The details of the shareholding of the shareholders in the borrower, have been provided in a Schedule to the said agreement, which is quoted below:-

SL.NO.	NAME OF SHAREHOLDER	NO. OF SHARES	% SHAREHOLDING
1	Hemant Kumar Das	1,06,620	15.23%
2	Ayush Raj	20,305	2.90%
3	AishraTechnofab Engineers	78,052	11.15%
4	Responce Renewable Energy Ltd	2,73,000	39.00%
			68.28%

9. Even if the issue of shareholding and non-transfer of shares and change in the composition of the shareholders are matters in dispute in another proceeding, insofar as, respondent No.2 is concerned, I find from the covenants in the said agreement that the shareholding of respondent No.2,

Responce Renewable Energy Limited [for short, 'Responce'], is also recognized in the subject agreement. Secondly, Response is also a signatory. Thirdly, the respondent No.1 while issuing the notices of demand for immediate payment, also alleged breach of the covenants of the agreement, apart from demanding payment with interest. In the letter dated March 21, 2025, the respondent No.1 through learned advocate had called upon the petitioner No.1 to remedy the breach and pay up the money by invoking clause 5(1)(c) which states that if the borrower is in breach or default of performance of any covenant, undertaking, condition or representation or warranty contained in the agreement, then such breach shall constitute an event of default, thereby entitling the respondent No.1 to invoke the rights under the agreement.

10. Although, the respondent No.1 submits that the breach which has been alleged has nothing to do with the respondent No.2, for the referral court to go into the details of the issue with regard to the rights and liabilities of the petitioner vis-à-vis the respondent No.2, is beyond the scope of this application. The decisions cited by Mr. Alim namely ***Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited*** reported at ***(2021) 5 SCC 738*** and ***M/s. Kotak Mahindra Prime Limited v. Manav Sethi & Another*** passed by the Delhi High Court on ***15.07.2024 in ARBITRATION AND CONCILIATION ACT, 1996.P. 946/2024 and I.A. No.32486/2024*** are on the question of compliance of Section 21 of the Arbitration and Conciliation Act, 1996. In this case, the

notice invoking arbitration was issued. If there are more than one signatory and a party seeks to invoke arbitration against all, the notice is not required to be issued to all. Moreover, whether there are disputes against the respondent No.2, whether the respondent No.2 has been unnecessarily dragged into the litigation etc, are matters which must be decided by the learned arbitrator. These issues touch the question of jurisdiction of the learned arbitrator and can be raised by the respondents before the learned arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

11. The law is well settled that, the issue of misjoinder is a matter to be decided by the learned arbitrator. The arbitrator can either add a party or delete a party. The prime consideration for this Court is to give utmost importance to the agreement between the parties to refer their disputes to arbitration. The expression “parties” in the agreement includes Response, who is also a signatory. Thus, even if there are no subsisting disputes as against the respondent No.2, as yet, the scope of reference can never be restricted, by limiting the claim at this point to allegations in the notice invoking arbitration. In the statement of claim, further allegations and claims may be made. Thus, at this stage, to hold that the respondent No.2 is not a proper party will be premature. Moreover, even if the respondent No.2 is not a necessary party, whether the arbitral proceeding can be properly adjudicated, in the absence of the respondent No.2 is also an issue which should be decided by the learned arbitrator. Under such

circumstances, this point is kept open, to be raised at the appropriate stage as already discussed hereinabove. The arbitrator can also expunge the respondent No. 2, upon imposition of cost upon the petitioner, if he finds that the respondent No. 2 has been unnecessarily dragged into the proceeding.

12. The application is allowed. Both the parties agree to Mr. Aniruddha Mitra, Senior Advocate, Bar Library Club being appointed [9810209315] as the learned arbitrator to resolve 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 remuneration, in terms of the Schedule of the Act. All questions with regard to arbitrability of the dispute, admissibility of the claim, limitation etc. are kept open to be decided by the learned arbitrator, if raised.
13. The proceeding before the National Company Law Tribunal, Kolkata is a separate and independent proceeding and will proceed accordance with law.
14. AP-COM/999/2025 and GA-COM/1/2026 stand disposed of.

(SHAMPA SARKAR, J.)