

ORDER

OCD-17

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/393/2025
SMT. ARCHANA PAUL
VS
MR. SWAPAN ACHARYA AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 7th July 2025.

Appearance:-

Mr. Sayak Chakraborti, Adv.
Mr. Wrickbrata Roy, Adv.
Mr. S. Chatterjee, Adv.
Mr. N. Molla, Adv.
Mr. Iswar Das, Adv.
...for petitioner.

1. The affidavit of service is taken on record. The respondent no. 1 could not be served as the door was locked. Intimation was served. The respondent no. 2 has been served. On the earlier occasion as well, the respondent no. 1 was not served. The postal authorities found on two separate occasions that the door was locked. Intimation was served, but the postal article remained unclaimed. The respondent no. 2 was served. The affidavit of service filed with the affidavit of motion also indicates that the respondent no. 1 did not claim the postal article, although intimation was served. The respondent no. 2 received the service of the application.
2. Under such circumstances, the matter can be taken up exparte as the respondent no. 2 does not appear despite notice. The service upon the respondent no. 1 is deemed to be effected in view of section 3 (1)(b) of the Arbitration and Conciliation Act, 1996 read with section 27 of the General

Clauses Act and the presumption under section 114 of the erstwhile Indian Evidence Act.

3. This is an application for appointment of an arbitrator to settle the dispute arising out of a deed of partnership dated September 21, 2019. The arbitration agreement is provided in Clause 19. It provides that any dispute or difference which may arise between the partners or their representatives with regard to construction, meaning, effect of the deed or in respect of the accounts, profits or losses of business and rights and liabilities of the parties or dissolution or winding up of the business, shall be referred to arbitration of a sole arbitrator and if parties do not agree to a sole arbitrator, then the dispute shall be settled by an arbitral tribunal.
4. In this case, the petitioner issued a notice invoking arbitration and filed an application under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner prayed for appointment of an arbitrator. The notice was found to be defective. On such technical ground, the earlier application was allowed to be withdrawn with liberty to the petitioner to take appropriate steps.
5. It appears that by notice March 13, 2025, arbitration was invoked. One of the partners i.e. the respondent No.2 received the notice. However, the postal article sent to the respondent no. 1 returned 'unclaimed'. In view of Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 read with Clause 27 of the General Clauses Act and the presumption under the erstwhile Section 114 of the Evidence Act, service of the notice is deemed to be effected upon the respondent No.1.

6. This is not a case where the other partners are not agreeing to a sole arbitrator. This is a case where the partners have not responded to the notice invoking arbitration. This gives a right to the petitioner to invoke arbitration in terms of Section 11 of the Arbitration and Conciliation Act, 1996, and pray for appointment of a sole arbitrator. This Court has the jurisdiction, as the cause of action arose within West Bengal. The petitioner prays for dissolution of the said partnership firm on various grounds including non-sharing of profits, non-disclosure of accounts etc.
7. This Court is of the, prima facie, view that the dispute is alive. The partners have not agreed to the dissolution, and the request has gone unchecked. All questions are left open to be decided by the learned arbitrator on evidence, including the issue of limitation of the claim. This court has not gone into the merits of the petitioner's contentions.
8. The application is disposed of by appointing Ms. Urmila Chakraborty, learned advocate Bar Library Club (Mob :- 9038456899) as an 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 her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)