

OCD 9

ORDER SHEET
AP-COM/997/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

PRESTIGE ICE CREAMS PRIVATE LIMITED
VS
MD MUSTAKIM

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 26th February, 2026.

Appearance:
Ms. Sanchari Chakraborty, Adv.
Ms. Tanishka Khandelwal, Adv.
...for the petitioner

Mr. S. Alam, Adv.
...for the respondent

The Court:

1. The learned advocate for the respondent submits that the matter may be settled. The learned advocate for the petitioner submits that the respondent has not come with any proposal yet. The petitioner prays for appointment of an arbitrator.
2. The petitioner is engaged in the business of manufacturing ice creams and marketing the same under the brand name "Rollick".

3. The respondent allegedly approached the petitioner to collaborate. The respondent would act as a Push Cart Distributor in the Kishanganj region and sell the products manufactured by the petitioner.
4. A Push Cart Agreement was entered into between the parties on June, 15, 2024. The petitioner contends to have handed over 10 ice cream push carts along with 10 deep freezers to the respondent. As per the said agreement, the title and ownership of the push carts and deep freezers remained exclusively with the petitioner. According to the petitioner, the respondent was obligated under the said agreement to procure the petitioner's product on a monthly basis and sell the same by using such push carts. The monthly sales targets were verbally communicated by the petitioner to the respondent. The respondent allegedly executed an irrevocable and unconditional undertaking, agreeing to return all the assets including the push carts and freezers as and when called for by the petitioner without any demur. Initially, the respondent generated sales of more than Rs.53,000/- but gradually the performance became slow. The petitioner's contention is that the respondent failed to meet the monthly sales targets and the respondent showed reluctance to continue with the push cart sales. The sales in September, 2024 was Rs.40,326/-.
5. From October, 2024, the respondent allegedly failed and refused to procure or sell further products. The petitioner contends to have extended multiple opportunities to the respondent, but the respondent did not continue with the sale of the product. The petitioner terminated

the agreement on April 8, 2025. A notice invoking arbitration was issued on May 19, 2025. Clause 10 of the Push Cart Agreement provides for settlement of dispute by arbitration and Courts of Kolkata were agreed to have exclusive jurisdiction. The petitioner also filed an application under Section 9 of the Arbitration and Conciliation Act and an order was passed by appointing a receiver to take over possession of the 10 push carts and the deep freezers. According to the petitioner, as on date, the claim is more than Rs.10 lakhs. Learned advocate for the respondent submits that the respondent has a counterclaim from the petitioner and not a single penny is payable to the petitioner. Moreover, push carts and freezers have already been taken possession of by the receiver and they are in good condition. Thus, the dispute between the parties are no longer arbitrable.

6. In view of the arbitration clause and in view of the submissions made by the parties, this court is of the view that the dispute should be referred to arbitration.
7. All questions with regard to arbitrability of the disputes, admissibility of the claim, limitation etc., are left open, to be raised and urged before the learned Arbitrator.
8. Under such circumstances, the Court appoints Mr. Ayan Kumar Boral, learned Advocate (Mob. No.9830547806), as the 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 his own remuneration as per the Schedule of the Act.

9. AP-COM/997/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)