19.11.2026
Item No.2
Court No.37
(Bench ID-266438)
CHC
(dismissed)

In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side
Commercial Appellate Division

AD-COM/45/2026
IA NO: CAN/1/2026

M/S Sandip Automobile & Anr.
Vs.
M/S Hyva (India) Pvt. Ltd. & Ors.

Mr. Shobhantanu Bhattacharyya, Advocate
Mr. Uttam Baidya, Advocate
Mr. Sagarmay Ghosh, Advocate (V.C)
...for the applicants/appellants

1. Appeal is directed against order dated August 29, 2026 passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in MS(Com) 11 of 2026.
2. By the impugned order, learned Judge Commercial Court allowed the application under Section 8 of the Arbitration and Conciliation Act, 1996 and disposed of the suit.
3. Learned advocate appearing for the appellants refers to the averments made in the plaint. He draws the attention of the Court to the Operation Agreement dated August 22, 2016 and in particular to Clause 14 thereof. He submits that, jurisdiction of the Court are specified in Clause 14 of the Operation Agreement.
4. We find from the records that, the appellants as plaintiffs filed the suit in relation to the disputes arising out of the operation agreement dated August

22, 2016. Appellants as plaintiffs initiated pre institution mediation under the provisions of the Commercial Act, 2015.

5. The respondents participated in such pre institution mediation. Pre institution mediation failed with the report stating as “not settled”. Thereafter, the appellants as plaintiffs filed the suit.
6. The attention of the learned advocate for the appellants is drawn to the cause-title of the plaint. Appellants included persons as parties who are neither necessary nor proper.
7. The Operation Agreement dated August 22, 2016 is between the two parties. It is between the defendant no.1 and the plaintiff no.1. the plaintiff no.1 is the sole proprietorship concern of the plaintiff no.2.
8. There are six defendants in the cause-title of the plaint. Apart from contracting parties who is made a defendant in the suit as defendant no.1, appellants proceeded to include other defendants in the suit. The defendant no.2 to 5 are personalities who are agents of the defendant no.1. Defendant no.6 is the defendant no.1 itself with different address. In view of Section 230 of the Contract Act, 1872, they are neither necessary nor the proper parties to the suit.
9. Pre institution mediation and participation therein does not obviate the rigor of the arbitration in the event the parties entered into arbitration agreement.

10. In the facts and circumstances of the present case, the Operation Agreement dated August 22, 2016 contains an arbitration agreement. Clause 13 is as follows:-

"13) ARBITRATION:

*It is expressly agreed and declared that any dispute relating to or arising out of this Agreement or any claim by either party against the other hereunder shall be adjudicated upon and decided by a sole arbitrator under the provisions of Arbitration and Conciliation Act, 1996. The venue and seat for the arbitration shall be Mumbai only.***"**

11. Learned Judge took into consideration Clause 13 of the Operation Agreement dated 22.08.2016, therefore, proceeded to apply Section 8 of the Act of 1996 and disposed of the suit.

12. In such circumstances, **AO-COM/45/2026** along with **CAN/1/2026** stand **dismissed.**

(Debangsu Basak, J.)

(Ajay Kumar Gupta, J.)

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