

GAHC010118252023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./19/2023

MEGHMALLAR ESTATES AND SERVICES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE INDIAN
COMPANIES ACT 2013 AND HAVING ITS REGISTERED ADDRESS AT 39, DR.
BN SAIKIA ROAD, SURVEY, BELTOLA, GUWAHATI, ASSAM REP. BY ITS
MANAGING DIRECTOR, SHRI ANUP SAIKIA.

VERSUS

M/S PROJECT HOUSING
A FIRM REGISTERED UNDER THE PARTNERSHIP ACT 1932 WITH ITS
REGISTERED ADDRESS AT PROTECH CENTRE, 6TH FLOOR, GS ROAD,
GUWAHATI- 781006, REP. BY MANOJ JALAN.

Advocate for the Petitioner : MR. K N CHOUDHURY
Advocate for the Respondent : MR. R BORPUJARI

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.09.2023

The present petition under Section 11[5] read with Section 11[6] of the Arbitration and Conciliation Act, 1996 has been preferred praying appointment of sole arbitrator by this Court.

2. Heard Mr. R. Choudhury, learned counsel in virtual mode and Mr. N. Gautam, learned counsel for the petitioner; and Mr. R. Borpujari, learned counsel for the respondent.

3. The petitioner is a company, incorporated under the provisions of the Companies Act, 2013 having its registered office at Guwahati, and the respondent is a partnership firm, registered under the provisions of the Partnership Act, 1932 having its registered office at Guwahati. It is the case of the petitioner that in and around 2009/2010, the petitioner company started a project named 'Meghmallar City Centre Residency' at Tarun Nagar, Guwahati for the purpose of developing/constructing multi-storied residential building apartments. As certain problems arose subsequently, the project was handed over to the respondent by entering into a Memorandum of Understanding [MoU] dated 09.11.2019. It was decided that [i] all development rights belonging to the petitioner along with the power of attorney would stand transferred and assigned to the respondent, and [ii] the respondent would take the entire project from the petitioner including all rights and liabilities of the petitioner *qua* the land owners of the project. Subsequent to execution of the MoU, registered Deeds of Rectifications, a registered Power of Attorneys, etc. were executed with the stakeholders. Finally on 06.06.2020, a Deed of Agreement was entered into *inter alia* defining the considerations to be given to the petitioner company by the respondent for taking over the project by the respondent from the petitioner company. In the subsequent period of time, disputes arose as regards the area of location of the petitioner company.

4. Clause 49 of the Deed of Agreement dated 06.06.2020 contained arbitration clause to the effect that in the event of any dispute or controversy between the parties to the Agreement the parties would settle their disputes arising out of or relating to the Agreement *inter alia* by a sole arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. By a notice dated 12.03.2023, the petitioner invoked the clause of arbitration.

5. The learned counsel for the parties have conjointly submitted that they have agreed for the appointment of Hon'ble Mr. Justice B.P. Kataky, Former Judge of this Court to act as the sole arbitrator for resolution of the disputes between the parties.

6. In view of the consensus so arrived at as regards the sole arbitrator, this Court in exercise of the powers conferred by Section 11[5] and Section 11[6] of the Arbitration and Conciliation Act, 1996 appoints Hon'ble Mr. Justice B.P. Katakya, Former Judge of this Court as the sole arbitrator to decide all the disputes arising out of the Agreement executed between the parties, subject to mandatory declaration required to be made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality and ability to devote sufficient time to complete the arbitration proceedings within the prescribed period as per Section 29-A of the Arbitration and Conciliation Act, 1996.

7. A copy of this order be despatched to Hon'ble Mr. Justice B.P. Katakya, Former Judge of this Court at his address for his information and necessary action. The parties will appear before the learned Arbitrator within a period of 1 [one] month from today and the learned Arbitrator will proceed in accordance with law.

8. With the observations made and the direction given above, the present petition stands disposed of.

JUDGE

Comparing Assistant