

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/301/2020

AWESOME INFRASTRUCTURE PVT. LTD AND ANR.
Versus
SABIL AHMED KHAN AND ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 24th November, 2020.

(Via Video Conference)

Appearance :

Mr. Mainak Bose, Adv.

Mr. Emon Bhattacharya, Adv.

Mr. Sounak Bhattacharya, Adv.

Mr. Shaunak Ghosh

... for the petitioner.

Mr. Barnik Ghosh, Adv.

Ms. Mudrika Khaitan, Adv.

Mr. Syed Adil Murshid, Adv.

... for the respondent.

Mr. Saubhik Chowdhury, Adv.

Mr. Sonal Shah, Adv.

... for intervenor.

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996(hereinafter referred to as “the said Act”). The nomenclature of the agreement dated 5th June, 2015 containing the arbitration agreement as a Clause therein is “agreement for development labour with material’s”. The applicants say that they have been engaged as contractor to complete the construction of the building at premises no. 70 B, Debendra Chandra Dey Road, P.S.-Tangra, Kolkata- 700015 at a construction cost of Rs.1500/- per sq. ft. under the said agreement. The execution of the said agreement including

the arbitration agreement contained in Clause 4 thereof is not disputed by the parties.

Applicants say that disputes and differences have arisen between the parties to the said agreement and as such the same requires to be adjudicated through arbitration. The applicants have appointed an Arbitrator by a letter dated 24th August, 2020 and has requested the respondents to concur upon the name. This letter was duly received by the respondents and has also been replied by a letter dated 28th September, 2020 caused to be written by the respondents through their Advocate.

The said agreement speaks of a completion time of 24 months from the date of sanction of the building plan. The building plan was sanctioned on 7th June, 2017 and as such the 24 months period will start operating from the said date. The claim, if any, of the applicants are therefor neither long barred nor stale claims. The arbitration agreement is admitted by the parties and that there exist disputes between the parties are also apparent from the letters dated 24th August, 2020 and reply thereto given on 28th September, 2020. It is an admitted position that the letter invoking the arbitration agreement has been received by the respondents and only thereafter the reply dated 28th September, 2020 was given.

The two fold objection has been raised by the respondents. Firstly the respondents say that the said agreement for all practical purposes is

a development agreement. Under the West Bengal amendment to Schedule I of the Stamp Act, 1889 i.e. Schedule 1A a development agreement has to be stamped. The maximum stamp duty leviable as such development agreement at the date of its execution is Rs.75,000/-. The agreement is insufficiently stamped as it has been typed out on a non-judicial stamp paper of Rs.10/-. The said agreement is also a notarized one. The respondents say that the said agreement containing the arbitration clause is insufficiently stamped and as such the same should be impounded and only after assessment of correct stamp duty and payment thereof with penalty, if any, the said agreement can be looked into. The arbitration clause contained in the said agreement cannot also be acted upon unless the said agreement can be looked into by this Court. The respondents rely upon 2011 (14) SCC 66 [SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited] and 2019 (9) SCC 209 [Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited] for such contention.

The second objection raised by the respondents are as to the inter se dispute between the directors of the applicant company. So far as the second objection raised by the respondents are concerned the same cannot be gone into at the Section 11 stage. At the stage of appointment of Arbitrator the Court has to see whether there is a valid arbitration agreement which can be acted upon, the arbitration agreement has been invoked, there is a failure to respond to the invocation made by the

adversary and the substantive claim that may be made in the arbitration proceeding is not long barred or stale claims on the face of record.

With regard to the first objection raised by the respondents, I find that in the said agreement the respondents have been described jointly as “developers”. The property which is to be developed belong to the parents of the respondents who are described as “land owners”. The applicant No.1 has been appointed as contractor for the purpose of construction of the building. The development agreement, if any, therefor has to be between the owners of the land that is the parents of the respondents and the respondents. The stamp duty if any has to be put into for the said development agreement. This Court at this stage is not concerned whether there exist any development agreement between the respondents and the land owner particularly when the execution of the said agreement is admitted. The respondents have themselves signed the agreement dated 5th June, 2015 describing themselves as “developer” and have engaged the applicants as contractors. An agreement with the contractor or construction of a building simpliciter without any right over the constructed property or to sale the same falls under the entry 5(e) of the schedule 1A (West Bengal Amendment) of the Indian Stamp Act, 1889. The development agreement on the other hand is classified in entry 5(f) of the said Schedule 1A. Since I hold that the agreement containing the arbitration clause is not a development

agreement, the same does not require to be impounded as the requisite stamp of Rs.10/- has been paid for the same.

The application is thus allowed. Sahidullah Munshi a former Judge of this Court is appointed Arbitrator to enter into reference and adjudicate all disputes between the parties. The learned Arbitrator so appointed will be entitled to fees and shall complete the arbitration proceedings in terms of the provisions of 1996 Act.

The application is accordingly disposed of without any order as to costs. Since, I have not called for any affidavit, the allegations made in the application are deemed to have not been admitted by the respondents.

(ARINDAM MUKHERJEE, J.)