**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

21.12.2021
Item No.5
Court No. 01
sg

CO 61 of 2021

Haldibari Tea Manufacturers LLP
Versus
Huldibari Industries and Plantation Company Ltd.

Mr. Joyjit Choudhury, Adv.
Mr. Ajay Singhal, Adv.
…for the petitioner

Mr. Partha Pratim Roy, Adv.
Ms. Suman Sehanabis (Mandal), Adv.
Mr. Puspal Chakraborty, Adv.
…for the respondent

Upon depositing a sum of Rs.4,89,65,967/- being the balance of the assessed amount that is required to be deposited in terms of the assessment made by the District Magistrate, Jalpaiguri in terms of the order dated 13th December, 2021, with the Registrar, Jalpaiguri within two weeks from date, the petitioner shall be entitled to proceed with the arbitration, which is to commence in terms of this order. The said deposit with the Registrar shall be without prejudice to the rights and contentions of the petitioner in the pending appeal before the Divisional Commissioner, Jalpaiguri Division.

There is no dispute either with regard to the existence of the arbitration agreement or the dispute that has arisen within the agreement. The District Magistrate-cum-Collector has already assessed the stamp duty at Rs.5,23,56,867/- out of which a sum of Rs.33,90,900/- has already been deposited within the Collector earlier in terms of the query dated 27th April, 2021 appearing at page 90 of the petition.

Accordingly, Justice Ashok Kumar Ganguly, Former Judge of the Hon'ble Supreme Court is appointed as Arbitrator to adjudicate the dispute between the parties. The learned Arbitrator shall enter reference upon intimation of the compliance of this order.

The learned Counsel appearing on behalf of the petitioner has submitted that an appeal has been preferred before the Divisional Commissioner, Jalpaiguri Division on 20th December, 2021. The Appellate Authority is requested to dispose of the appeal within a period of two weeks from the date of the communication of this order.

Mr. Roy, learned Counsel appearing on behalf of the respondent submits that the Assessing Authority is required to exercise its power under Section 35 of the Indian Stamp Act, 1899 and no penalty has been imposed by the said Authority.

Insofar as the instruments not duly stamped, Assessing Authority needs to assess the stamp duty in terms of the provisions of the Indian Stamp Act, 1899.

The Court is only required to ensure that the State exchequer is not deprived of the stamp duty to be assessed on the instrument by the Collector. It is needless to mention that the Appellate Authority, while assessing the order of the Collector, shall take into consideration all relevant factors.

I make it clear that, in default of depositing the money in terms of this order, the arbitration shall not commence and this order shall stand automatically recalled and the application shall stand automatically dismissed.

The Registrar, Jalpaiguri Bench, shall deposit the said amount in a suitable fixed deposit account with any nationalized bank yielding highest return and shall allow withdrawal of the said amount only for the purpose of payment of stamp duty after assessment by the Appellate Authority. It is made clear that the assessment to be made by the Appellate Authority shall be the final amount required to be deposited in order to make the said document admissible in evidence.

With the above direction, CO 61 of 2021 is disposed of.

The copy of this order shall be immediately communicated to the Collector, Jalpaiguri for doing the needful.

(Soumen Sen, J.)