

AP 8 of 2021

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

GOLF GREEN BUILDERS PRIVATE LIMITED
-Versus-
GOPESHWAR PRASAD AGARWAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 19th January, 2021.

Appearance:
Mr. Satadeep Bhattacharyya, Adv.
Mr. Vedika Sureka, Adv.
...for the petitioner.

Mr. Farhan Ghaffar, Adv.
...for the respondents.

The Court : In this application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (in short, 'the Act of 1996') the petitioner company has prayed for appointment of two Arbitrators and the Presiding Arbitrator to constitute the Arbitral Tribunal as mentioned hereinafter.

On December 12, 2014 a registered joint venture agreement was executed between the petitioner and the respondents for development of the property situate at premises no.61, Surya Sen Road, Kolkata-700 035 (hereinafter referred to as 'the said premises').

Article 18.1 of the joint venture agreement contemplated that all disputes and difference between the parties thereto relating to the said agreement shall be referred to the Arbitrators appointed by each party and the same shall be deemed to be a reference within the meaning of the Act of 1996 or any statutory modification thereto.

According to the petitioner, in view of various defaults committed by the respondents by a communication dated March 28, 2019 they terminated the said joint venture agreement and claimed refund of Rs.2.5 crores, along with interest at the rate of 18 per cent per annum from the respondents. Thereafter, by letter dated May 13, 2019 addressed to the petitioner the respondents sought reference of the disputes between the parties to arbitration and nominated their arbitrator. Subsequently, however, the said arbitrator nominated by the respondents declined to accept the post of arbitrator. By a letter dated May 18, 2019 the petitioner also nominated their arbitrator. Even the said arbitrator nominated by the petitioner had withdrawn himself from the arbitral proceeding. Thereafter, by letter dated July 9, 2020 addressed to the respondents the petitioner once again mentioned the names of three retired Judges to comprise the Arbitral Tribunal. The respondents, however, by their letter dated July 20, 2020 refused to refer the disputes to arbitration.

In the above factual background, the petitioner filed this application seeking relief already mentioned hereinabove. Although the respondents sought to file an affidavit-in-opposition to this application but they could not dispute either the existence of the aforementioned arbitration agreement contained Article 18.1 of the joint venture agreement or the invocation of the said arbitration agreement by themselves.

The parties herein had agreed that the Arbitral Tribunal would be comprising only two members nominated by them

respectively. However, Section 10(1) of the Act of 1996 mandates that the number of arbitrators shall not be even number. Thus, the petitioner has sought for appointment of two Arbitrators, one nominating itself and the other Arbitrator nominating the respondents as well as the appointment of the Presiding Arbitrator.

In the present case, when the existence of the arbitration agreement between the parties is not in dispute and the parties have failed to agree to the appointment of the Arbitrator, the petitioner company substantiated the ground under Section 11(6) of the Act of 1996 for filing the present application.

Considering the facts of the case, Justice Tapan Kumar Dutt, and Justice Madhumati Mitra, both former Judges of this Court are appointed as the nominee Arbitrators for the petitioner and the respondent, respectively. Justice Shyamal Kumar Sen, Chief Justice of Allahabad High Court is appointed as the Presiding Arbitrator of the Arbitral Tribunal.

The Arbitrators as well as the Presiding Arbitrator shall be free to fix their respective fees which shall be borne by the parties in equal shares. The Arbitral Tribunal shall be free to engage the secretarial staff whose remuneration shall be borne by the parties in equal shares.

With the above directions, the application, AP No.8 of 2021 is allowed.

There shall, however, be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(ASHIS KUMAR CHAKRABORTY, J.)

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