

OD-86

ORDER SHEET
AP 59 OF 2021
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

RATAN CHANDRA DEY
VERSUS
SIMPLEX INFRASTRUCTURES LTD.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date : 10TH FEBRUARY, 2021.

Appearance:
Ms. Deblina Lahiri, Adv.
Mr. D. Sarkar, Adv.
Mr. M. Chatterjee, Adv.
....For the Petitioner

Mr. S. Sen, Adv.
Mr. A. Banerjee, Adv.
...For the Respondent

The Court : By this application under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks interim protection.

Learned Advocate appearing for the respondent relies upon **(2020) 5 Supreme Court Cases 462 (BRAHMANI RIVER PELLETS LIMITED Versus KAMACHI INDUSTRIES LIMITED)** and **(2020) 4 Supreme Court Cases 234 (BGS SGS SOMA JV Versus NHPC LIMITED)** and submits that, in view of the venue of arbitration being fixed at Delhi, in the relevant arbitration agreement, this Hon'ble Court does not have jurisdiction to try, entertain and determine the instant proceeding.

Learned Advocate appearing for the petitioner submits that, although, the venue of arbitration is fixed to be at Delhi, the arbitrator is named to be the Managing Director of the respondent, who is seated in Kolkata.

BRAHMANI RIVER PELLETS LIMITED (Supra) and BGS SGS SOMA JV (Supra) are of the view, where, the parties agree to a venue of arbitration the same will be akin to a forum selection clause and that, the Court having jurisdiction over the venue of arbitration will have jurisdiction with regard to the arbitration proceeding.

In the facts of the present case, Clause IX of the letter dated August 22, 2011 is the arbitration agreement. The same is as follows :

“9.Any dispute regarding the construction of this Agreement or interpretation of any terms hereof or any dispute arising out of this agreement shall be referred to the Managing Director of the Company, as the sole Arbitrator, whose decision shall be final and binding and the venue of arbitration will be Delhi, India.”

By an under the arbitration agreement quoted above, the parties agreed that the venue of arbitration will be held at Delhi, India. The agreement between the parties is without any forum selection Clause which is contrary to the venue shown. In fact, there is no forum selection clause in the letter dated August 22, 2011. An arbitration agreement can come into an existence by exchange of letters. It is not disputed by the parties that there exist an arbitration agreement.

In such circumstances, in view of the ratio of BRAHMANI RIVER PELLETS LIMITED (Supra) and BGS SGS SOMA JV (Supra), I find that, this Hon'ble Court does not have jurisdiction to try entertain and determine this petition.

AP No.59 of 2021 is, therefore, dismissed due to lack of jurisdiction.

(DEBANGSU BASAK, J.)

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