

ORDER SHEET

AP/159/2019

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

WEST BENGAL GOLF SOCIETY AND ANR.  
VERSUS  
THE INDIAN GOLF UNION AND ORS.

BEFORE:  
The Hon'ble JUSTICE DEBANGSU BASAK  
Date: 22<sup>nd</sup> March, 2021.

(Via Video Conference)

*Appearance:*  
*Mr. Sarosij Dasgupta, Adv.*  
*Mr. Souvik Ganguly, Adv.*  
*...for the petitioners*

*Mr. Rishav Karnani, Adv.*  
*Mr. Anurag Bagaria, Adv.*  
*...for the respondents.*

The Court: The petitioners seek appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

It is the claim of the petitioners that, by reason of Rule 70 of the 2014 Rules, the parties are to be referred to arbitration to settle disputes arising between them.

It is the contention of the respondents that, the 2014 Rules were given a go-bye and that the 2018 Rules are in operation. Learned advocate appearing the respondents submits that the Court exercising power under Section 11 of the Act of 1996 is required to find out whether or not, there was a novation of the arbitration agreement. He submits, in the facts of the present case, the arbitration agreement stood novated in 2018. Therefore, the claim for reference to arbitration under the Rules of 2014, is misplaced.

Learned advocate appearing for the petitioners submits that the issue as to whether, the 2014 Rules or the 2018 Rules governs the field, was gone into in an appeal under Section 37 of the Act of 1996 being F.M.A. 617 of 2019 (The Indian Golf Union & Ors. Vs. West Bengal Golf Society & Ors.) dated February 19, 2020. He submits that, the disputes and differences remaining outstanding, the parties be referred to arbitration.

In the facts of the present case, the petitioners seek reference under the 2014 Rules of the society. It is the claim of the respondents that the 2018 Rules supersede the 2014 Rules. In both 2014 and 2018 Rules, there are clauses for referring the disputes between the members of the society to arbitration.

The issue as to whether the parties are governed by the 2014 or the 2018 Rules came up for consideration before the Division Bench in F.M.A. 617 of 2019 being an appeal under Section 37 of the Act of 1996 between the same parties.

In such appeal by the judgment and order dated February 19, 2020, the Division Bench was pleased to hold as follows:

“The question of the validity of the 2018 Rules depends upon whether the 2014 Rules were followed in bringing about amendments to the 2014 Rules. Thus, as argued by Mr. Bachawat, it would be the arbitration agreement in the Rules and Regulations (2014), i.e. Rule 70 of those Rules, which would be applicable to the dispute between the parties. Hence, the first issue is resolved in favour of the respondents: there exists an arbitration agreement between the parties which governs the dispute between them, so the learned Trial Judge had the jurisdiction to entertain the application under Section 9 of the Arbitration and Conciliation Act, 1996. However, this finding should not influence the arbitrator/arbitral tribunal should there be an issue raised with regard to its jurisdiction, in view of the Rules of 2018, by either of the parties in course of arbitration. The arbitrator’s autonomy to decide its own jurisdiction is not affected by our finding.”

The Division Bench left the issue of the Rules of 2018 open to be decided in the arbitral proceeding. The decision of the Division Bench is binding upon the parties.

In the facts of the present case, therefore, it cannot be said with certainty that there is no arbitration agreement between the parties. That being the case, it would be appropriate to refer the disputes between the parties to arbitration.

In such circumstances, Mr. Shyam Sarkar, Senior Advocate, Bar Library Club (Mob. No.9836761066) is appointed as the Arbitrator. The learned Arbitrator is at liberty to fix his remuneration. The parties will share the remuneration and the costs and expenses of the arbitration equally between the petitioners on one part and the Indian Golf Union on the other part.

The parties are at liberty to communicate this order to the learned Arbitrator.

AP/159/2019 is disposed of accordingly.

(DEBANGSU BASAK, J.)