

ORDER SHEET

APO/116/2020
With
CS/47/2007
IA No. GA/1/2020

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

TARA PROPERTIES PVT LTD
VS.
UNION OF INDIA AND ANR

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : April 22, 2021.

[Via Video Conference]

Appearance:

Mr. Anubhav Sinha, Adv.

Mr. Ramij Munshi, Adv.

Mr. Mandeep Kaur, Adv.

Mr. Kumar Jyoti Tewari, Adv.

Mr. Sailendra Kumar Tiwari, Adv.

Mr. Sunil Kumar Singhania, Adv.

Ms. Madhurima Das, Adv.

The Court : By consent of the parties, the appeal and the application are treated as on day's list and are disposed of by this common order.

During the course of hearing of the application, the parties have agreed that the appeal can also be taken up for consideration.

The appeal is arising out of an order dated 24th September, 2020 in connection with an application filed by the petitioner appellant under Chapter XIII A of the Original Side Rules for summary judgement.

During the course of hearing, learned Judge was of the opinion that the dispute raised in the plaint is pending for adjudication before Arbitral Tribunal and in view thereof, the Learned Single Judge refrained from exercising jurisdiction in the matter.

We have heard learned counsel for the parties.

We could not find any arbitration agreement covering the present dispute.

The learned counsel for the Union of India is also unable to support the finding of the Learned Single Judge and has clearly submitted that the dispute raised in the plaint is not covered by the dispute contemplated in the earlier arbitration agreement between the parties. Moreover, it appears that substantial progress was made with regard to the hearing of the application under Chapter XIII A of the Original Side Rules and at a stage when the parties were decided to settle their disputes, the said impugned order was passed. The respondent has never raised any such plea of arbitrability of the present dispute.

As a proposition of law, it cannot be disputed that if the disputes are covered by an arbitration clause and Arbitral Tribunal is in seisin over the matter, the Court would ordinarily not exercise its jurisdiction, particularly in view of Section 5 of the Arbitration and Conciliation Act, 1996. However, in the facts and circumstances of the case, it appears that the disputes raised in the plaint are required to be adjudicated by the Court and not

covered by any arbitration agreement between the parties. On such consideration, the impugned order dated 24th September 2020 is set aside. GA 1 of 2007 filed in CS 47 of 2007 is revived and now required to be decided on merits unless the parties arrive at any settlement.

However, it is recorded that Union of India has paid a sum of Rs.4,39,06,519/- in terms of our order dated 23rd March, 2021 and to that extent, the application under Chapter XIII A of the Original Side Rules succeeds.

In view of the fact that the said amount has already been paid in terms of order dated 23rd March, 2021, the department while drawing up a decree for a sum of Rs.4,39,06,519/- in terms of our order dated 23rd March, 2021 shall also record satisfaction of the said decree to the extent of Rs.4,39,06,519/-.

The other claims of the plaintiff under Chapter XIII A application are not considered and shall be considered by the Learned Single Judge upon the matter being listed before the Learned Single Judge having the determination.

The appeal is allowed.

APO 116 of 2020 along with IA No.GA/1/2020 is disposed of accordingly.

(SOUMEN SEN, J.)

(SAUGATA BHATTACHARYYA, J.)