

ORDER SHEET

AP/373/2019

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

RAMESH VINIYOG PRIVATE LIMITED  
VERSUS  
SOLAR (OVERSEAS) ENGINEERING COMPANY AND ORS.

BEFORE:  
The Hon'ble JUSTICE DEBANGSU BASAK  
Date: 19<sup>th</sup> March, 2021.

(Via Video Conference)

*Appearance:*  
*Mr. Falguni Bandyopadhyay, Adv.*  
*Ms. Sreetama Neogi, Adv.*  
*...for the petitioner*

*Mr. Sankarsan Sarkar, Adv.*  
*Mr. Ratul Das, Adv.*  
*Mr. Pran Gopal Das, Adv.*  
*Mr. Tanmoy Sett, Adv.*  
*...for the respondents*

The Court: The petitioner seeks constitution of the Arbitral Tribunal under Section 11(6) of the Arbitration and Conciliation Act, 1996 in terms of the arbitration agreement contained in the development agreement dated July 18, 2003.

Initially, an order was passed for impounding the development agreement. Subsequently, the order was recalled on the ground that, the development agreement was entered into and executed by the parties much prior to the requirement under the Stamp Act to stamp a development agreement as a conveyance.

The existence of the arbitration agreement is not disputed by the parties.

The arbitration agreement is as follows:

“ARTICLE – VII : ARBITRATION

All disputes and differences between the parties etc arises out of this agreement regarding construction or interpretation of any terms and conditions herein contained or determination of any liability touching these presents shall be referred to joint arbitrator to the nominated by the Developer and the owners of his intervention and who will act as Arbitrators and their decision will be binding upon in all respect and shall be deemed to be a reference within the meaning of the Arbitration Act and conciliation Act, 1996 or any statutory enactment of modification thereof and the award given by such Arbitrators shall be binding and conclusion.”

Learned advocate appearing for the petitioner submits that initially an Arbitrator was appointed who expired without concluding the reference. Thereafter, the parties admitted and acknowledged the existence of the jural relationship lastly by tendering a cheque in November, 2016. The claim of the petitioner is live as on the date of filing of the petition under Section 11 of the Act of 1996.

Learned advocate appearing for the respondent submits that, the petition is not maintainable in view of the fact that, all partners of the unregistered partnership firm are not parties to this proceeding. Moreover, the claim is not a live claim.

In the facts of the present case, as there exists an arbitration agreement between the parties and since the arbitration agreement allows the parties to nominate one Arbitrator each, the parties were called upon to name their nominees. The petitioner named Mr. Sutanu Chakraborty, Advocate as his nominee Arbitrator. The respondents nominated Mr. Sakya Sen, Advocate as their Arbitrator.

In such circumstances, the two nominee Arbitrators of the parties, will nominate the third Arbitrator to constitute the Arbitral Tribunal in accordance with the arbitration agreement. The Arbitral Tribunal will enter into reference of the disputes between the

parties in terms of the arbitration agreement contained in the development agreement dated July 18, 2003.

The issue of limitation as well as the issue of maintainability as raised by the respondents are kept open to be decided by the Arbitral Tribunal.

The Arbitral Tribunal is at liberty to fix their remuneration to be shared by the parties equally.

The parties will bear the costs and expenses of the arbitration in equal share.

The parties will inform the Arbitral Tribunal of this order.

AP/373/2019 is disposed of.

(DEBANGSU BASAK, J.)