

AP/362/2021
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

SOURAV DUTTA
VERSUS
BENGAL SHELTER HOUSING DEVELOPMENT LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 6th December, 2021.

[Via Video Conference]

APPEARANCE:

Ms. Micky Chowdhury, Advocate
Mr. Sanjay Kumar Baid, Advocate
.....for the applicant
Mr. Nilanjan Bhattacharjee, Advocate
Mr. Arpan Guha, Advocate
.....for the respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of Arbitrator to resolve the disputes between the parties.

Learned counsel for the applicant has pointed out that three work orders dated 31st October, 2017, 22nd March, 2018 and 22nd March, 2018 were issued by the respondent to the applicant for supply, fabrication and erection of powder coated aluminum doors and windows and in terms thereof, the applicant had made the supply but the full payment was not made. She has pointed out that the applicant by notice dated 1st February, 2021 had raised the claim of Rs.28,48,431/- whereas in the reply dated 10th February, 2021, respondent had stated the outstanding amount of Rs.18,97,780/- and thereafter the reconciliation of the accounts had taken place in which the respondent had agreed for a sum of Rs.26,29,927/- but even the said amount was not paid. Hence, the notice dated 14th July, 2021 was sent to the

respondent invoking the arbitration clause and requesting for appointment of arbitrator but no response to the said notice was sent.

The respondent has not filed any reply to this AP. Learned counsel for the respondent has raised an oral objection that one AP for three work orders cannot be maintained. But such an objection cannot be accepted in view of the fact that all the three work orders were in respect of the same project i.e. Teenkanya Housing Project and that the regular common account for the three work orders was maintained and reconciliation of the account was also common for the three work orders. Hence, the objection raised by the respondent is rejected.

The three work orders mentioned above and the arbitration clause contained therein are not in dispute. All the three work orders contained the following clause:-

“ARBITRATION:

If any dispute arises out of the contract or execution of works, the matter shall be referred to an Arbitrator duly appointed by the employer and the process of arbitration will be governed by the Indian Arbitration and Conciliation Act, 1996. However, the place of jurisdiction will be in Kolkata only.”

Since the arbitration agreement exists between the parties and dispute has arisen and due formalities for appointment of the arbitrator has already been completed but the arbitrator has not been appointed by the respondent, therefore, I am of the opinion that the AP filed by the applicant deserves to be allowed and hence, AP No. 362 of 2021 is allowed by appointing Mr. Shuvasish Sengupta, Advocate, Bar Library Club, 2nd floor as arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)