

ODC 9

ORDER SHEET
IA NO.GA/1/2021
In
CS/167/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

GAURAV CHURIWAL
Versus
CONCRETE DEVELOPERS LLP AND ORS.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 7th December, 2021.

(Via Video Conference)

Appearance:
Mr. Sarvapriya Mukherjee, Adv.
Mr. Debraj Sahu, Adv.
Mr. Snehashis Sen, Adv.

Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Mr. Sourajit Dasgupta, Adv.
Ms. A. Ghosh, Adv.

The Court: This is an application for stay of all proceedings in the suit being CS/167/2021 and for referring the disputes that have arisen between the parties to arbitration.

Counsel on behalf of the petitioner has submitted that the petitioner is the limited liability partnership wherein six of the defendants were the partners along with the deceased father of the plaintiff. Upon the death of the deceased father of the plaintiff, the suit was filed with regard to the induction of the

plaintiff as a partner in place and stead of the deceased partner and for accounts of the partnership.

Mr. Mukherjee, counsel appearing for the petitioner has placed reliance on para 22 (v) and (vi) of the partnership agreement to indicate that the plaintiff's right of appointment in place and stead of a deceased partner arises from these clauses. He further referred to paragraph 33 to indicate that the entire partnership agreement was subject to arbitration. In light of the same, he has submitted that the parties should be referred to arbitration.

Mr. Banerjee, counsel appearing on behalf of the plaintiff/respondent has relied on the Supreme Court's judgment in **Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. And Others** reported in (2013) 1 SCC 641 to emphasise the fact that his right under the agreement would fructify only upon his being inducted and not before his induction. He relies on paragraph 70 to buttress his argument.

I have heard the parties and perused the materials on record. In the present case, I find that the right provided under Clause 22(v) is a right that is vested with each one of the partners wherein upon the death of a partner, one of the heirs would be admitted as a partner. From a reading of this clause, it appears that this is vested right provided to each one of the partners and accordingly, gets transferred to his heirs. The particular claim made in the suit is based on this right itself, and accordingly, the plaintiff is claiming very much under the agreement that contains the arbitration clause. Any disputes arising therefrom would have to be referred to arbitration and decided in that forum.

In light of the above observation, I refer the parties to arbitration.

As nothing remains in the suit, the suit is dismissed.

The department is directed to strike the same from the ledger.

The parties herein have consented to appointment of an Arbitrator and requested the Court to appoint an Arbitrator. Accordingly, on consent of both parties Mr. Suman Dutt, Advocate is appointed as Arbitrator.

By consent of the parties, I make it clear that all disputes between the parties are referred to the sole Arbitrator.

IA No.GA/1/2021 is disposed of.

(SHEKHAR B. SARAF, J.)