

ORDER SHEET

OD-12

AP No. 683 of 2019
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BISWADEEP CHAKRABORTY
VERSUS
SUJIT KUMAR BAKSHI

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date: 18th March, 2021.

(Via Video Conference)

Appearance:
Mr. Satadeep Bhattacharya, Adv.
For the petitioner.

Mr. Shambhunath Ray, Adv.
For the respondent.

The Court :- Affidavit in opposition filed in Court be taken on record.

In this application under Section 11[6] of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an arbitrator. The facts disclosed on the materials made available on record establish that, there is an agreement dated November 28, 2014. Such agreement was found to be insufficiently stamped duty and directed to be impounded. The petitioner produced the original of the agreement and the same was impounded. The petitioner paid requisite stamp duty, registration fee and penalty. By an order dated February 4, 2021, such fact was recorded. The original agreement is presently lying with the Registrar, Original Side pending the registration.

The agreement dated November 28, 2014 contains an arbitraation clause which is as follows:-

****	***	****	****	**
24. <i>All disputes of any nature or sort touching the terms of this Agreement and/or touching the construction mode shall be referred to sole arbitration according to choice of the parties under the provisions of Arbitration and Conciliation Act, 1996.</i>				
***	***	****	****	**

Disputes and differences arose between the parties under the agreement dated November 28, 2014. The petitioner invoked the arbitration clause in the agreement and issued a letter dated August 20, 2019.

It is the contention of the respondent that, the agreement dated November 28, 2014 is invalid. It is also the contention of the respondent that, there are several proceedings pending between the parties.

The agreement dated November 28, 2014 was impounded. The petitioner paid requisite stamp duty, registration fee and penalty. The original document is with the Registrar, Original Side pending registration.

At this stage, therefore, it cannot be said that, the agreement dated November 28, 2014 is invalid. However, a finding of such aspect need not be returned finally under Section 11 of the Act of 1996. If such an issue is raised before the arbitrator, it may be decided, in accordance with law. Moreover, the arbitration agreement may survive the matrix contract itself.

In the facts of the present case, it is not proved even at the prima facie level that, the arbitration agreement does not exist. Disputes raised between the parties are covered by the arbitration agreement.

In such circumstances, it would be appropriate to refer the dispute to arbitration.

Mr. Kallol Bose, Advocate, Bar Association, Phone No. 9830219624 is appointed as the Arbitrator in terms of the arbitration agreement existing between the parties. The Arbitrator is at liberty to fix his own remuneration to be shared equally by the parties. The parties will bear their costs and expenses of the arbitration in equal share.

The parties are at liberty to inform the Arbitrator of this order.

AP No. 683 of 2019 is disposed of accordingly.

Prayer for stay made is considered and refused.

(DEBANGSU BASAK, J.)