

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.240 of 2020
and C.M.P.No.11902 of 2020

1.M/s.Rising Tide

8/1/H Diamond Harbour Road,
Kolkata - 700 027, Rep. by its
Partner, M/s.Rohan Daniel Mukherjee.

2.Rohan Daniel Mukherjee

3.M/s.Arnab Daniel Mukherjee

... Appellants

-vs-

M/s.Waterbase Limited

Rep. by its Authorized Signatory,
Mr.R.Suresh Kumar

... Respondent

Appeal filed under Clause 15 of the Letters Patent Act read with Order XXXVI Rule 9 of O.S. Rules against the order dated 31.07.2020 passed in Appln.No.9720 of 2019 on the file of original side of this Court.

For Appellants : Mr.T.Saikrishnan

For Respondent : Mr.M.S.Krishnan
Sr. Counsel for
Mr.Anirudh Krishnan

सत्यमेव जयते

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JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The appellant questions the propriety of an order passed under Section 9 of the Arbitration and Conciliation Act, 1996, primarily on the ground that there is no arbitration agreement between the parties.

2. It so transpires that the respondent has already approached the appropriate forum under Section 11 of the Act for

the constitution of an arbitral tribunal. There is no doubt that the ground which is raised by the appellant herein can be conveniently addressed in course of such proceedings under Section 11 of the Act.

3. It is elementary that when an objection is taken regarding the physical existence of an arbitration agreement, such issue has to be somewhat gone into before an order for reference may be made. However, when the physical existence of the arbitration agreement appears to be undisputed and only the efficacy thereof is questioned, that falls within the exclusive domain of the arbitrator to decide, unless the disputes by their very nature are not arbitrable.

4. Since the appellants herein require the primary ground raised to be left for adjudication in course of the proceedings under Section 11 of the Act or, upon a prima facie view taken therein and the matter being left for assessment before the arbitrator, the present appeal may be disposed of without going into such legal issue. In the light of such legal issue not being addressed at this stage, the propriety of the order impugned has not been gone into. This is at the invitation of the appellants herein.

O.S.A.No.240 of 2020 and C.M.P.No.11902 of 2020 are disposed of by not addressing the issue as to the existence or efficacy of the arbitration agreement and not interfering with the order impugned at the invitation of the appellant herein so that the ground of maintainability can be decided in the other proceedings as recorded above. There will be no order as to costs.

Sd/-
Assistant Registrar (CS.III)

/True Copy/

सत्यमेव जयते Sub Assistant Registrar

To
The Sub Assistant Registrar, Original Side,
High Court of Madras, Chennai -104.

+1cc to Mr.Anirudh Krishnan, Advocate SR.NO.8864
+1cc to Mr.T.Sai Krishnan, Advocate SR.NO.8526

AKM/24.02.21/ 2P- 4c/
AKM/02.03.21/ 2P- 4C/

O.S.A.No.240 of 2020
15.02.2021