

02.03.2022

Sl. 1

Ct.No. 1

Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

(COMMERCIAL DIVISION)

FMAT 702 of 2021

Tirupati Shubh Shopper Pvt. Limited

Vs.

**Bengal Peerless Housing Development
Co. Limited & Anr.**

With

CAN No. 1 of 2021

Mr. Ratnanko Banerjee, Sr. Adv.

Mr. Jishnu Chowdhury

Mr. Ratnesh Kumar Rai

Mr. Ankan Rai

Mr. Vipra Garg

...for the appellant

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Shamba Chakraborty

Mr. Kaushik Chatterjee

Mr. Triptimoy Talukdar

Mr. Diptomoy Talukder

...for the respondents

Re: CAN No. 1 of 2021

We are told that the arbitral tribunal has been constituted.

The intention of the legislature in Section 9(3) of the Arbitration and Conciliation Act, 1996 is that once the tribunal has been constituted, it should consider the cases brought under Section 9 of the said Act if Section 17 of the said Act permits such consideration. Although theoretically there is no bar to an appeal from an order under Section 9 of the said Act to be

entertained by us, following the intent and purpose of the legislature, we feel it would be proper if the subject matter of this appeal is considered by the tribunal.

On 23rd December, 2021 we had recorded in our order the statement made by learned counsel for the respondents that his clients would not create any third party interest in the property or otherwise deal with the same. Till date the respondents have honoured this statement.

We dispose of the appeal and the connected application by relegating the subject matter thereof to the arbitral tribunal to be considered by it under Section 17 of the said Act.

The papers of the stay petition and the papers of the learned court below will constitute the papers of the Section 17 proceeding.

All points are kept open before the arbitral tribunal.

It would not be bound by any observations made by us or by the learned court below.

We also record Mr. Mitra's submission that his clients are only prepared to renew their undertaking for 4 weeks from date.

While relegating this matter to the arbitral tribunal, we direct that the status quo as of today, as a result of the above undertaking, shall continue for a period of 4 weeks from date till 30th March, 2022 or until further orders of the arbitral tribunal, whichever is earlier.

As affidavits were not invited, the allegations contained in the stay petition are deemed not to have been admitted.

(Aniruddha Roy,J.)

(I. P. Mukerji,J.)