

AP/531/2021

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONENVIRO SYSTEMS & EQUIPMENT INCORPORATE
VERSUS
NIKHIL MONDAL @ NIKHIL CHANDRA MONDAL & ANR.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTVA
DATE : 11TH MARCH, 2022

APPEARANCE:

Mr. Souvik Sen, Advocate
Mr. Shaunak Ghosh, Advocate
Ms. Aditi Dutta, Advocate
.....for the petitioner

The Court:- The fresh affidavit of service filed by the applicant is taken on record. The respondent is duly served in the matter.

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator.

Learned counsel for the applicant has pointed out that the development agreement dated 22nd March, 2016 was executed between the parties which contains the following arbitration clause:

“T. *In case a dispute arises between the parties hereto regarding any transaction made in terms of this Agreement, or as to interpretation, operation or enforcement of any term of this agreement the dispute shall be referred for adjudication to an arbitrator to be appointed mutually and jointly by the parties, whose decision shall be final and binding on the parties and their legal representatives. If the parties fail to appoint a single arbitrator, each party will appoint an arbitrator and the two arbitrators will adjudicate the dispute. If the two arbitrators fail to concur, they will appoint an umpire and the decision of such umpire shall be final and binding upon the parties.*”

He has also pointed out that in terms of the above arbitration clause, initially the notice dated 2nd November, 2020 was sent by the applicant proposing

the name of the sole arbitrator, but the respondents vide their reply dated 10th November, 2020, had denied the appointment of the sole arbitrator. The applicant, therefore, had sent notice dated 15th January, 2021 nominating Mr. Durga Prasad Dutta, Advocate, as one of the arbitrators and requesting the respondents to appoint the second arbitrator. The respondents vide communication dated 27th January, 2021 had nominated Mr. Chandan Banerjee as the second arbitrator but thereafter the dispute arose between the two arbitrators in respect of the venue for conducting the arbitration proceedings, hence for last one year the matter has not been proceeded with. He has submitted that in terms of Section 10 of the Act, appointment of even number of arbitrators cannot be sustained and that in terms of Section 11(4)(b) of the Act, when two appointed arbitrators fail to agree on the third arbitrator for appointment, then it is the Court's jurisdiction to appoint the third arbitrator. In this regard, he has placed reliance upon the judgement of the Supreme Court in the matter of *ONGC Petro Additions Limited vs. Daelim Industrial Company Ltd.* (AIR 2015 SC 2861) and the judgment of Bombay High Court in the matter of *Haresh Chinnubhai Shah vs. Rajesh Prabhakar Jhaveri* (2004(1) MH L.J. 1109). In the aforesaid background, the prayer is made for appointment of third arbitrator so that the arbitral proceeding in terms of the arbitration clause may continue.

No one has appeared for the respondents. Therefore, arbitration agreement and the submission made by counsel for the applicant have remained uncontested. In view of the above-uncontested position, I am of the opinion that the prayer of the applicant for appointment of third arbitrator deserves to be allowed. Accordingly, Mr. Soumya Dasgupta, Advocate M: 9830576448 of this Court is appointed an arbitrator. The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original
Side forthwith.

AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)

sm/akg