

ORDER

OD-3

AP/624/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

WINTECH COMMERCIAL PRIVATE LIMITED
VERSUS
GREENTECH IT CITY PRIVATE LIMITED

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 23rd SEPTEMBER, 2022

APPEARANCE:

Mr. Rachit Lakhmani, Advocate

Mr. Siddharth Makkar, Advocate

Mr. Sumit Biswas, Advocate

....for the applicant

Mr. Varun Kothari, Advocate

Mr. Tanish Ganeriwala, Advocate

Mr. Yubaraj Bhattacharyya, Advocate

. . . for respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the arbitrator to resolve the disputes between the parties.

Learned counsel for the applicant has pointed out that the agreement for sale dated 24th September, 2013 was executed between the parties and that the respondent herein is the owner/developer in the said agreement. He has also pointed out that the agreement contains the following arbitration clause :

“ ARTICLE 16. DISPUTE RESOLUTION

In the event of a dispute arising out of or in connection with the Agreement such dispute shall be referred to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The parties have mutually agreed to refer all and/or any dispute to the sole arbitration of Mr. A. K. Chowdhary Advocate, High Court, Calcutta, 10, Old Post Office Street, Room No.21, First Floor Kolkata 700001. All proceedings in any such Arbitration shall be conducted in English. The proceedings shall be held in Kolkata, West Bengal. The Arbitral award

shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.”

Submission of learned counsel for the applicant is that after execution of the agreement, substantial consideration amount was paid to the respondent and the applicant was also given possession of the property but thereafter the conveyance deed has not been executed. Therefore, the applicant had served notice on 20th July, 2022 invoking the arbitration clause but no response to the said notice was given. He also submits that the named arbitrator is an Advocate of the respondent. Therefore, he has interest in the matter and he cannot be appointed as arbitrator.

Learned counsel for the respondent has disputed the fact that the substantial amount was paid by the applicant in pursuance to the arbitration agreement.

The issue relating to the quantum of payment need not be gone into in this proceeding because that is open for consideration by the arbitrator. Since affidavits have not been exchanged by the parties, therefore, pleadings on merit in the AP are treated to be not admitted.

Undisputedly the arbitration agreement exists between the parties. Considering averment contained in the agreement, the plea raised by the counsel for the applicant that the named arbitrator has interest in the matter and he is disqualified to the appointment of arbitrator is accepted. Hence, in the above circumstances of the case, AP is allowed and Mr. Anil Kumar Gupta (Mob.No. 9830258546), Advocate of this Court is appointed as Arbitrator to resolve the disputes between the parties.

The appointment of the arbitrator 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.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)