

1 23.11.23

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T. 524 of 2023
With
CAN 1 of 2023**

OFB Tech Private Limited and Ors.

Vs.

M/s. AKMB Projects Private Limited and Ors.

**Mr. Jaydip Kar
Mr. Sourav Kumar Mukherjee
Mr. Kaushik Chowdhury
Ms. S. Pal ... For the Appellants.**

**Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta For the Respondent no. 1.**

**Mr. Soni Ojha
Ms. Sonia Nandy ... For the ICICI Bank.**

We admit this appeal. As the point involved is very short, we propose to dispose of it today dispensing with all formalities.

The dispute between the parties arises out of a financial agreement between them. It contains an arbitration as well as a forum selection clause.

In the forum selection clause, the courts at New Delhi have exclusive jurisdiction to try the dispute between the parties.

S.D.

Mr. Jaydip Kar, learned senior advocate appearing for the appellants/petitioners submits that part of the cause of action has arisen in New Delhi. Therefore, the learned court at Alipore has no jurisdiction to try and

determine the suit.

By an ex-parte ad interim order dated 17th October, 2023 passed by the City Civil Court, Calcutta (Misc. Case No. 6166 of 2023), which is impugned in this appeal, the appellants/petitioners have been directed to provide a bank guarantee or security of any mode of Rs. 56,50,298/-. In the impugned order it has simply been stated that on perusal of the records the learned judge found this amount to be the admitted amount which the appellants “refused to pay”.

Where the jurisdiction of the court is questioned by a party, that question has to be resolved first before any finding can be made on any material issue.

Mr. Surya Prasad Chattopadhyay, learned counsel appearing for the respondents submitted that the dispute between the parties was within a very short area and that if Mr. Jaydip Kar’s client waived the forum selection clause, it could easily be resolved by the court.

We are of the view that a decision has to be made by the learned court below on the question of jurisdiction before proceeding with the merits of the matter. Such question is kept open before that court to be resolved in whatever manner, depending on the stand taken by the parties.

As far as the second point is concerned any order based on an alleged admission cannot be made unless the

other party is given an opportunity of responding to the alleged admission. It can either affirm or deny it or say that it was made subject to certain conditions, after the court has to decide the question of admission. This opportunity was not given.

In those circumstances, we set aside the impugned order dated 17th October, 2023 and remand the Section 9 application (Arbitration and Conciliation Act, 1996) to the learned court below to be heard out afresh from the motion stage after giving an opportunity to the appellants/petitioners to be heard and by a reasoned order.

We request the learned judge to dispose of the interim application within three months from date.

Our observations are to be taken as prima facie.

All points are kept open.

The appeal (FMAT 524 of 2023) and the connected application (CAN 1 of 2023) are disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

