

AP/62/2023

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

DEVARSHI REALCON PRIVATE LIMITED
VERSUS
RAHUL BHAGAT

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 9TH FEBRUARY, 2023.

APPEARANCE:

Mr. Sanjib Kumar Mal, Advocate
Mr. Saptarshi Kumar Mal, Advocate
.....for the applicant

Mr. Chiranjib Sinha, Advocate
Mr. Dyutiman Banerjee, Advocate
.. .. for the 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 Arbitration Agreement contained in the form of tender dated 24th July, 2017 exists between the parties which contained the following arbitration clause:

“29.0. ARBITRATION: Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this Contract or the breach thereof shall be settled by the arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and govern under the Arbitration and Conciliation Act, 1996 with any modification thereof and the Award made in the pursuance thereof shall be final and binding on the parties. Unless both parties concur in the appointment of a sole Arbitrator, reference shall be made to three arbitrators, one to be appointed by each party within 30 (thirty) working days after receipt by the other party of a written notice from the other such other, party having appointed an arbitrator before issue of the notice, and a third arbitrator to be selected within 30 (thirty) working days of the date of nomination of the second arbitrator.”

He further submits that since dispute had arisen between the parties, therefore, the applicant had served the notice dated 11th October, 2022

in terms of Section 21 of the Act which was replied by the respondent on 2nd November, 2022 only disputing the proposed arbitrator.

Learned counsel for the respondent has not disputed the arbitration agreement or service of notice under Section 21 but has made the only submission that the applicant has served a demand notice and the respondent has also served a demand notice on the applicant and under Section 9 of the Act, the Trial Court has stayed the demand notice of the respondent which was the subject matter of appeal being FMAT (ARBAWARD) 60 of 2022 whereby the Division Bench by order dated 3rd February, 2023 has set aside the order of the Trial Court.

The above facts disclosed by the learned counsel for the respondent do not come in the way of appointment of arbitrator under Section 11 of the Act especially when the present AP has not been opposed by the respondent.

Hence, the prayer made in the AP for appointment of the sole arbitrator is allowed and Mr. Justice Pranab Kumar Chattopadhyay (Mob.no:9830929721), a retired Judge of this Court is appointed as the sole arbitrator, 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.)