

AP/199/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CITYSTAR INFRASTRUCTURES LIMITED
VS
SUMANGAL DEALMARK PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : April 17, 2023.

Appearance:

Mr. Jishnu Saha, Sr. Adv.

Mr. Ishaan Saha, Adv.

Mr. Deepak Jain, Adv.

...for the petitioner

Mr. Debmalya Dasgupta, Adv.

Mr. Rajesh Upadhyay, Adv.

....for the respondent

The Court: Affidavit-of-service has been filed.

At the outset, since no affidavits are invited in the matter, it is deemed that none of the allegations made in the application under Section 11 of the Arbitration and Conciliation Act, 1996 are admitted.

The petitioner claims that a dispute has arisen between the petitioner, the developer and the respondent in terms of the contract between the parties dated February 18, 2014. However, there being an arbitration clause in the same, it is argued that the petitioner has rightly, within the scope of the arbitration clause, referred the matter to the named arbitrator. However, subsequently there was no

response to the same from the named arbitrator. It is further submitted that the named arbitrator is ineligible to be an arbitrator or act as an arbitrator within the purview of the 1996 Act, as amended till date.

It is, thus, submitted that an arbitrator be appointed for resolving the dispute.

Learned counsel for the respondent submits that the claim is palpably time-barred. Counsel places reliance on Clause 4 of the agreement which stipulates that the developer has to complete and construct the flats and buildings as per the plan to be sanctioned by KMC within three years from the date of sanction of the building plan by the KMC.

Since the invocation has been made much after the expiry of the said three years, the claim is time barred.

It is further submitted that as of today, after coming into force of the 2015 Amendment to the 1996 Act, “named arbitrator” cannot *per se* be a ground of disqualification for the arbitrator.

Upon hearing learned counsel, it transpires that the clause pertaining to a specific time for completion and construction of the flats is the matter of issue to be decided on merits.

However, the limitation period for a claim is not dependent on any such clauses of the agreement but on the date when the disputes have arisen between the parties, unless the cause of action is a continuing one.

It appears from the invocation by the petitioner that a live cause of action has been referred to in the same. As such, it cannot be said at this stage that the dispute is non-arbitrable or that the claim is time-barred. It is well-settled

that even if the clause of limitation is debatable and arguable, the parties have to be compelled to honour the arbitration clause and refer the matter to arbitration. As such, the objection as to limitation cannot but be turned down.

In so far as the “named arbitrator” objection is concerned, the same is not relevant in view of the arbitrator named by the parties having also been otherwise alleged to be ineligible.

In any event, since the named arbitrator has not responded to the invocation of the arbitration clause by the petitioner, there is no further doubt on the fact that an arbitrator is required to be appointed under the contemplation of Section 11 of the 1996 Act.

Accordingly, AP No.199 of 2023 is allowed by appointing Justice Madhumati Mitra, a former Judge of this Court, residing at “Pax”, BD-I, Street No. 107, Action Area 1, New Town, Kolkata – 700 156 (Mobile No. – 8910099797), as the sole Arbitrator to decide the disputes between the parties, subject to obtaining declaration/consent under Section 12 of the 1996 Act.

(SABYASACHI BHATTACHARYYA, J.)