

ORDER SHEET
AP/438/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

JUGAL KISHORE SADANI
VS
M/S. J. N. B. S. A. REALTORS LLP

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 12th April, 2023.

Appearance:
Mr. Dhiraj Trivedi, Adv.
Mr. Bikash Kumar Singh, Adv.
Ms. Swapna Jha, Adv.
...for the petitioner

The Court: None has appeared on behalf of the respondent on several occasions in spite of service. It is to be noted that directions for affidavits were given on 7th October, 2021 when counsel had appeared on behalf of the respondent. Subsequently, the matter has appeared on 17th February, 2023 and on 24th March, 2023 when none has appeared on behalf of the respondent.

Upon perusal of the records, I find that the development agreement dated 15th December, 2015 was terminated by a letter dated 19th July, 2021 and in the same letter notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act was issued. The petitioner had also suggested the name of a

sole Arbitrator in the said letter. A reply to this notice was issued on 19th August, 2021 by the respondent.

In light of the above facts and circumstances, I am of the view that there is an arbitration clause between the parties in the development agreement at para 22.2 which is provided below:

“22.2. In the event the parties hereto being not able to amicably clarify by the confusions and/or misunderstandings and/or to mutually resolve the disputes and/or differences as provided hereinabove, all disputes and differences by and between the parties hereto concerning or relating to or arising out of this Agreement or with regard to interpretation of this Agreement or any of the clauses herein recorded and/or the respective claims of the parties, the same shall be referred to the sole Arbitrator to be nominated mutually by the parties for final adjudication as per the provisions of the Arbitration and Conciliation Act, 1996. The sole Arbitrator shall have summary power and need not record the reasons and further be at liberty to make interim awards. However if appointment of the sole arbitrator cannot be reached mutually, then the parties will be at liberty to choose one arbitrator each. The arbitrators so appointed shall thereafter choose a third arbitrator being the umpire. The decision of the arbitrators shall be final and binding on both the parties.”

Keeping in mind the catena of judgment of the Supreme Court, I am of the view that this Court should appoint a sole Arbitrator.

Accordingly, Mr. Samrat Sen, Senior Advocate, is appointed as sole arbitrator to resolve the dispute between the parties.

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 No. 438 of 2021 is, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)