

OCD-5

AP/447/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

M/S SHAKAMBHARI ISPAT AND POWER LIMITED
VS
ARATI SADHUKHAN AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 29th August, 2023.

Appearance:
Mr. Debmalya Ghosal, Adv.
Mr. Bhaskar Dwivedi, Adv.
Mr. Abhik Chitta Kundu, Adv.
...for the petitioner

The Court:- The respondents have been served twice but are still not represented. Affidavit-of-service is kept on record.

The petitioner has assessed the stamp duty payable on the arbitration Agreement pursuant to an order of this Court dated 19th July, 2023. The petitioner has paid the requisite stamp duty on the document. The supplementary affidavit of the petitioner encloses the relevant material in this regard.

The dispute arises out of a Memorandum of Understanding which appears to be coupled with an agreement executed between the petitioner and the predecessor of the respondents on 25th February, 2020. The petitioner was to supply TMT Bars to the predecessor of the respondents in exchange of valuable

consideration. The document records that the “dealer/agent” (meaning the predecessor) has received goods valued at Rs.44,23,700/- and has paid Rs.24,73,174/- as on the date of the Agreement. The MOU further records that the dealer acknowledges that an undisputed principal sum of Rs.19,50,526/- is due and payable as on the date of the Agreement and undertakes to clear an amount of Rs.24,73,174/- within 90 days of the Agreement date with 24% interest p.a. The MOU/Agreement contains an arbitration clause and proposes to refer the disputes to a named Arbitrator.

The predecessor of the respondents died on 24th January, 2022 and the petitioner issued a letter of demand on the respondents on 25th February, 2023 stating that an agreement had been executed between the petitioner and the predecessor of the respondents and enclosed a statement of the outstanding dues amounting to Rs.19,50,526/-. The petitioner thereafter invoked the arbitration clause by a notice sent under Section 21 of the 1996 Act on 14th April, 2023 with a statement of the principal amount of Rs.19,50,526/- along with interest calculated at 24% p.a. amounting to Rs.14,04,378/-. The total demand made was Rs.33,54,904/-.

The issue which would first fall for consideration is whether the respondents who are the widow, daughter and son (in order of their names in the cause-title) are bound by the arbitration agreement.

Section 40 of The Arbitration and Conciliation Act, 1996 provides that an arbitration agreement will not be discharged by death of a party thereto and in

sub-section (1) thereof provides that an arbitration agreement shall not be discharged by the death of any party in respect of the deceased or any other party but shall be enforceable by or against the legal representative of the deceased. Sub-section (2) of Section 40 further provides that the mandate of an Arbitrator shall not be terminated by the death of any party by who he was appointed. Sub-section (3) provides that nothing in this Section shall affect the operation of law by virtue of which any right of action is extinguished by the death of a person.

Section 2(1)(g) of the Act defines “ legal representative” as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and also where a party acts in a representative character and the person on whom the estate devolves on the death of the party so acting. Section 35 of the Act, which relates to finality and enforcement of arbitral awards, further declares that arbitral award shall be final and binding not only on the parties but also persons claiming under them respectively.

In the present case, it is undisputed that all the three respondents before the Court are family members of the predecessor of the respondents who was a party to the arbitration Agreement and passed away after execution of the agreement.

The provisions read together, would make it clear that the arbitration agreement executed between the petitioner and the predecessor of the

respondents is binding on the respondents after the death of the predecessor. Significantly, Section 40 of the Act should not only be read only as a stranglehold but an empowering statutory mandate as well since the section provides that the arbitration Agreement shall be enforceable “*by or against the legal representative of the deceased*”. Therefore, a legal representative, as defined under Section 2(1)(g) of the Act, would be entitled to enforce an arbitration agreement against the contracting party in equal measure as the deceased party and reap the benefits arising therefrom.

The Supreme Court in *Ravi Prakash Goel vs. Chandra Prakash Goel* reported in (2008)13 SCC 667 held that a person who has the right to represent the estate of the deceased person occupies the status of a legal person. A similar view was also taken by a Division Bench of this Court in *Dr. Papiya Mukherjee vs. Aruna Banerjee and Another* reported in SCC OnLine Cal 595.

In view of the declared statutory provisions and the relevant case-law, this Court is of the view that the arbitration Agreement is binding on the respondents and respondents are therefore under an obligation to represent the rights and obligations of their predecessor who was a party to the arbitration Agreement.

The respondents have not replied to the notice sent under Section 21 of the Act although being in receipt of the same.

The facts indicate that there is indeed a dispute between the parties which is required to be resolved by appointment of an Arbitrator. The choice of the

parties of the named Arbitrator stands foregone in view of the present application.

AP/447/2023 is, accordingly, allowed and disposed of by appointing Mr. Satadeep Bhattacharya, counsel to act as a learned Arbitrator, subject to the Arbitrator communicating his/her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The advocate-on-record of the petitioner shall communicate this order on the learned Arbitrator by 31st August, 2023 and also to the respondents within the same time-frame with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)