

OC-3

ORDER SHEET

AP/684/2023

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

G4S FACILITY SERVICES INDIA PRIVATE LIMITED
Versus
ALCOVE GLORIA RESIDENTS ASSOCIATION

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 9th October, 2023.

Appearance:

*Mr. Aditya Mondal, Adv.
.... for the petitioner*

*Mr. Amit Sharma, Adv.
Ms. Shalu Gupta, Adv.
...for the respondent*

The Court: It is clear not only from the submissions made on behalf of the parties but also the material disclosed to the Court that there is indeed a dispute between the parties.

The dispute relates to a Facility Management Services agreement executed between the petitioner and the Residents Association of a building complex in Kolkata. The services were provided in the form of several agreements, which related to the same work and were executed one after another on expiration of the period mentioned in the individual agreements. The last agreement is dated 1st January, 2020 which contains an arbitration

clause. The respondent allegedly terminated the services of the petitioner on 25th June, 2020; although there is no document to this effect, the petitioner has pleaded the same and the respondent has not denied the fact.

The petitioner now claims approximately Rs.65 lakhs on account of the services rendered to the respondent. The claim would be substantiated from a letter of demand dated 1st October, 2020 to which the respondent replied on 6th November, 2020 with a counter-claim of Rs.12 lakhs; the petitioner replied to this letter on 23rd March, 2021. The petitioner invoked the arbitration clause in the Agreement of 1st January, 2020 by a Section 21 notice on 12th August, 2021. The respondent replied to this notice on 17th September, 2021 seeking recourse to mediation in terms of the arbitration agreement. Further correspondence ensued between the parties.

The Court has been given to understand that the petitioner approached the District Legal Services Authority, Rajarhat, for mediation and even got the matter on board but the mediation failed since the respondent did not pay any heed to the mediation. This is the allegation made on behalf of the petitioner. The parties, through learned counsel, however, agree that the mediation failed and has been exhausted in terms of the arbitration agreement.

Although, learned counsel appearing for the respondent relies on a tabulated statement of the claims and says that at least one of the claims of 2019 would be barred by limitation, this Court is of the view that there is nothing on record to show that the disputes or the claims are *ex facie* barred by the laws of limitation. It is now settled that the Court must come to a

specific finding that the Section 11 application cannot be allowed on the claims being patently barred by limitation. This is not such a case. An arbitrator is the fit person to decide on the issue of limitation, if any.

The dispute is required to be resolved and is directly relatable to the arbitration agreement between the parties.

It is further understood that notwithstanding the four agreements mentioned in the invocation notice of 12th August, 2021, the parties rely on the final agreement of 1st January, 2020.

AP/684/2023 is allowed and disposed of by appointing Mr. Rajratna Sen, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 11th October, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.