

AP/700/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONCRATE SHARE LOGISTICS LLP
VERSUS
KAYA BLENDERS AND DISTILLERS LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 19th January, 2023

APPEARANCE:

Mr. Saptak Sanyal, Advocate
Mr. Shayak Mitra, Advocate
Mr. Arun Mishra, Advocate
...for the petitionerMr. Dilip Kumar Samanta, Advocate
Mr. Debopriya Samanta, Advocate
....for respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the arbitration agreement dated 9th December, 2020 was executed between the parties, which contained the following arbitration clause :

“24. During existence of this agreement Second Party will not enter into any other similar agreement with any other person or any other Liquor Company or party in the Market where First Party is doing efforts or Sale or marketing in INDIA for the agreed brand or any other similar nature brand or business until mutually discussed between both the parties party No.1 and Party no.2 and to start such activities or business by Party No.2 anywhere in India it should be and with the consent of Party No.1 only. It is also a binding that Second party will not Market any Liquor Brand of any other company on his name directly or indirectly through family members or sister concerns who are involved with Party No.2 for this business. Even after the termination of this agreement second Party for at-least one year cannot do business of Liquor on his own name for his own brands or Brands of any other company until the consent of Party No.1. If such business activities happen by party No.2 then party no.1 will have the right to initiate the proceedings under the appropriate law against the concerned persons of the party no.2, if they will cause loss to the party no.1 in violation of this agreement and under those circumstances the party no.1 will have a right to initiate the proceedings according to law at the courts the jurisdiction District Patiala & West Bengal. If any dispute or difference arises out of this agreement between the parties, the same shall be

resolved by Arbitration and Conciliation Act, having jurisdiction at Patiala & West Bengal only and the party no.2 will not have any right to pursue any type of the proceedings under the provisions of any Law out of the jurisdiction of Patiala & West Bengal. One arbitrator can be appointed by party no.1 and one arbitrator can be appointed by party no.2 and both arbitrators will be their best to resolve the dispute or any misconception. Either party cannot file the Complaint or Sue Each other before One Arbitration session.”

He has also pointed out that the respondent had not acted in terms of the agreement, therefore, the dispute had arisen between the parties and invoking the arbitration clause, the notice dated 30th July, 2022 was served upon the respondent suggesting the name of the arbitrator. But the respondent had sent the reply dated 29th August, 2022 taking a plea that subsequently a fresh agreement was executed between the parties and had not accepted the prayer for appointment of the arbitrator.

This Court by the previous order dated 8th December, 2022 had granted last opportunity to the respondent to file affidavit-in-opposition but till now, no affidavit-in-opposition has been filed. The oral plea of the counsel for the respondent that a fresh agreement was executed between the parties, is not supported by any document, hence, he can raise such a plea before the arbitrator and if any such document is available that can be duly looked into by the arbitrator.

Before this Court, there is no material to decide if the agreement dated 9th December, 2020 noted above was substituted or had lost its force on account of execution of any fresh agreement therefore such an issue can be decided on the basis of evidence to be led before the arbitrator.

Learned counsel for the appellant has also placed reliance upon the judgment of the Supreme Court in the matter of Sanjiv Prakash vs. Seema Kukreja and others reported in (2021) 9 SCC 732 wherein the view has been taken that the earlier MoU has been novated by the subsequent MoU, is to be decided by the Arbitrator.

The record further reflects that the applicant had filed the application under Section 9 of the Act before this Court on the Original Side and this Court

on 30th June, 2022 had passed the injunction order restraining the respondent from dealing with the properties mentioned in the application till the disposal of the application.

Counsel for the applicant has also relied upon the judgement of the Supreme Court in the matter of General Manager East Coast Railway Rail Sadan and Another vs. Hindustan Construction Co. Ltd. reported in 2022 SCC OnLine SC 907 wherein it is held that the application for appointment of arbitration is to be made before the Court under whose jurisdiction Section 9 application is filed.

Having regard to the above, I am of the opinion that the prayer made by the applicant for appointment of the sole Arbitrator to resolve the disputes deserves to be allowed. Accordingly, the AP is allowed. Mr. Koushik Chowdhuri, an Advocate of this Court is appointed as Arbitrator to resolve the disputes between the parties, 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.

(PRAKASH SHRIVASTAVA, C.J.)