

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

AP/814/2023

DEBASISH SAMANTA
VS
SRI BISWAJIT SARKAR AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 13th December, 2023.

Appearance:

Mr. Saunak Mukhopadhyay, Adv.

Mr. Samrat Mukherji, Adv.

Mr. Rik Mukherji, Adv.

Ms. Dakshayani Basu, Adv.

...for the petitioner

Mr. Supratic Roy, Adv.

Ms. Akansha Mukherji, Adv.

Mr. Goutam Das, Adv.

...for the respondent no. 1

Mr. Dyutimoy Paul, Adv.

Mr. Abhishek Kabir, Adv.

...for the respondent no. 2

Mr. Paurush Bandopadhyay, Adv.

Ms. Chanchala Chatterjee, Adv.

...for the respondent nos. 4 and 5

The Court:- The dispute arises out a Deed of Partnership dated 24th January, 2020 under which 5 of the 6 partners are before the Court. This Deed of Partnership contains an Arbitration clause.

The petitioner's grievance primarily arises out of the lack of capital contribution of three of the partners, namely, respondent nos. 1, 2 and 3, and also their lack of contribution to the partnership firm. The petitioner says through the learned counsel that the petitioner invested about Rs.3.97 crores

for taking forward a cold chain project in the State of Jammu and Kashmir for which the partnership was created at the first instance and the partnership also received lease from the Government of Jammu and Kashmir. Counsel submits that the petitioner continued to perform his obligations under the Deed in aid of the project but the defaulting partners failed in terms of capital investment as well as contributing to the business of the firm.

Four of the five respondents are represented.

There is a series of correspondence between the petitioner and the defaulting partners from July, 2021 including a letter of 9th August, 2021 whereby the petitioner asked the defaulting partners to retire from the firm. The respondent no. 1 (one of the three defaulting partners) in turn filed an application under Section 9 of the 1996 Act which was subsequently withdrawn. The petitioner also issued demand notices including on 21st June, 2023 and ultimately invoked the Arbitration agreement on 26th July, 2023. The respondent no. 1 replied to the notice of invocation. The other two defaulting partners remained silent. The petitioner apparently does not have any dispute with the respondent nos. 4 and 5.

Learned counsel appearing for the defaulting partners/respondent nos. 1 and 2, does not dispute that there is an Arbitration agreement. The only point taken on behalf of the respondent no. 1 is a requirement of having the stamp duty assessed. However, after the decision of a 7-Judge Bench of the Supreme Court today in *Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 Curative*

Pet(C) No. 44/2023 In R.P.(C) No. 704/2021 In C.A. No. 1599/2020, nothing remains to be decided in this matter.

There is indeed a dispute between the parties and one that is required to be resolved by an Arbitrator. The dispute is also relatable to the Arbitration agreement contained in the Deed of Partnership.

AP/814/2023 accordingly allowed and disposed of by appointing Mr. Pinaki Ghose, former Judge of the Supreme Court to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 16th December, 2023 along with the relevant details of the contact person.

It should be stated that the respondent no. 3 is not represented despite several attempted service. The petitioner discloses communications both by e-mail as well as by Speed Post at the address of the respondent which is mentioned in the cause title of the application.

(MOUSHUMI BHATTACHARYA, J.)