

1 13.8.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T 226 of 2024
With
CAN 1 of 2024**

**M/s. Siddhi Vinayak Paper Mills Pvt. Ltd.
Vs.
M/s. Sri Siddhi Vinayak Paper Mills Pvt. Ltd.**

**Mr. Probal Mukherjee
Mr. Suhrid Sur ... For the Appellant/Petitioner.**

**Mr. Anuj Singh
Ms. R. Singhee
Mr. S. Roy
Ms. A. Baid**

Re: CAN 1 of 2024

We have heard learned counsel for the parties.

We are in a position to dispose of this appeal (FMAT 226 of 2024) dispensing with all formalities.

We reiterate our observation made in our order dated 1st August, 2024 that by termination of the agreement the arbitration clause was not wiped out. In fact it remains in full force to enable the arbitral tribunal to decide the rights and liabilities of the parties arising out of the agreement allegedly terminated.

S.D.

In that view of the matter, we set aside the impugned judgement and order dated 3rd May, 2024. We direct the learned court below to hear out the Section 9 application at the motion stage upon notice to and in the presence of the parties. All points are kept open before the learned court below. Particularly, the question whether the court

has jurisdiction to entertain, try and determine the Section 9 application in view of the submission made that there is a forum selection clause between the parties where the selected forum is not Jalpaiguri. This issue is to be determined by the court prima facie before any interim order is considered.

The interim order made by us on 1st August, 2024 will continue till 6th September, 2024 or until any further order to the contrary is passed by the learned court below.

We also make it clear that the learned court shall not be bound to continue the said interim order unless it is satisfied that it should be so done.

The appeal (FMAT 226 of 2024) and the connected application (CAN 1 of 2024) are disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

