

AD-49
Ct No.01
Jalpaiguri
26.07.2024
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

FMAT(ARBAWARD) 1 of 2024
IA NO.CAN 1 of 2024

BENGAL CHEMISTS AND DRUGGISTS
ASSOCIATION AND ANR.
VS
AMITAVA SAHA @ PINTU AND ORS.

Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha,
Ms. Esha Acharya

...for the Appellants

Mr. Suresh Kumar Mitruka,
Mr. Aayush Mitruka,
Mr. Sujit Swami

...for the respondents

1. Affidavit of service filed today be kept on record.
2. Learned counsel for the appellants contends that while passing an ad interim order under Section 9 of the Arbitration and Conciliation Act, 1996, the Court below failed to take into consideration that the arbitration clause contained in the Articles of Association, being Clause 56(a), contemplates any dispute arising between the association and any member/members to be the subject matter of arbitration.

3. However, it is submitted that the said clause does not contemplate applicability of the principle of Order 1 Rule 8 of the Code of Civil Procedure and as such, the dispute sought to be raised by the applicant in the Section 9 application in representative capacity is not arbitrable. Hence, it is contended that the Section 9 Court acted *de hors* its jurisdiction in passing interim orders.
4. Such contention is opposed by learned counsel for the respondents. Learned counsel for the respondents also contends that in the meantime a notice of reference under Section 21 of the 1996 Act was issued by the applicants/respondents to which the present appellant has responded, where the appellant has admitted the arbitrability of the issue. Be that as it may, it is also pointed out that it would be premature for this Court to enter into such issue on merits.
5. Learned counsel for the appellants controverts the above contentions of the respondents
6. Upon a perusal of Clause 56(a), which is the arbitration clause, we find that the issue now sought to be raised by the appellant is, in the least, an arguable issue and as such, forms a

triable issue which can be decided by the Section 9 Court.

7. However, any final adjudication on the said issue at this juncture would be premature both by this Court and/or the Section 9 Court, since ultimately it would be for the Arbitrator, as and when the matter is referred, to decide such issue conclusively.
8. Since we find that a *prima facie* case has been made out by the applicant/ respondent before the Section 9 Court, there is no scope for interference at this juncture.
9. However, we make it clear that we have not entered into merits of the respective cases of the parties and it would be open both to the Court taking up the Section 9 application in its final hearing and the arbitrator, as and when referred to, to decide such issues conclusively at trial.
10. The learned Court taking up the application under Section 9 of the 1996 Act shall positively take up the Section 9 application for hearing on the next date fixed, that is, on August 17, 2024 and shall dispose of the same finally by August 31, 2024.
11. For complying with the above direction, it would be open to the parties to seek that the

matter be taken up by any Court of Additional District Judge, if otherwise competent to take up such matters, in the event the chair of the learned District Judge is vacant at the relevant point of time.

12. With the above observations, we are not inclined to interfere at this stage. Accordingly, FMAT(ARB AWARD) 1 of 2024 along with CAN 1 of 2024 are dismissed without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)