

OD-10

ORDER SHEET

AP/38/2024

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

BISWADEEP CHAKRABORTY  
VS  
SONALI PAL CHOWDHURY AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 20<sup>th</sup> February, 2024.

Appearance:

*Mr. Ishaan Saha, Adv.*

*Mr. Tanuj Kakrania, Adv.*

*Mr. Karanjeet Sharma, Adv.*

*..for the petitioner*

*Mr. Shaunak Mitra, Adv.*

*Mr. A. Chaudhuri, Adv.*

*..for the respondents*

The Court: This is an application under Section 11 of The Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

The arbitration clause/agreement is contained in an Agreement for assignment/transfer of lease dated 6<sup>th</sup> May, 2023 by which the respondents were to transfer their leasehold interest in the property in favour of the petitioner. This Agreement has an arbitration clause in Clause 20 thereof.

The petitioner, through learned counsel, claims that the petitioner has made payment of Rs.16 lakhs out of Rs.1.72 crores in accordance with the terms of the Agreement. Counsel submits that the respondents have received

the said payment but are refusing to comply with their reciprocal obligations in terms of the assignment of the leasehold interest. It appears from the documents placed before the Court that the petitioner invoked the arbitration agreement by way of a notice dated 22<sup>nd</sup> August, 2023. This is after the petitioner applied for interim protection before the Rajarhat Commercial Court on 7<sup>th</sup> August, 2023. The order of injunction is dated 7<sup>th</sup> August, 2023.

The point with regard to service of the Section 21 notice on the respondents cannot be a point in dispute since there are several documents including a postal endorsement with an AD Card which shows that the notice was delivered on both the respondents.

Learned counsel appearing for the respondents objects to the maintainability of the application on the ground that the notice of invocation is beyond the contemplation of the arbitration agreement. Counsel submits that the arbitration agreement is only concerned with interpretation of the agreement and not on any other dispute or difference. It is further submitted that the two-tier mechanism provided in the arbitration clause is also limited to interpretation of the Assignment Agreement.

The objection taken on behalf of the respondents is rejected for the following reasons.

First, Clause 20 of the Agreement/Arbitration Agreement itself. The first part of the clause makes it clear that the arbitration agreement covers “*any dispute and/or difference*” which is not qualified by the restriction on the interpretation in the later part of the Clause. In any event, sub-section (6) of

Section 11 of the 1996 Act and the recent pronouncements of the Supreme Court on the principle of Kompetenz-kompetenz points to the Arbitrator having absolute and exclusive jurisdiction to decide all questions of interpretation. The exception to the all-domain jurisdiction of the Arbitrator is only in terms of “deadwood” (non-arbitrable claim) or an *ex facie* time-barred claim. None of the two are applicable in the facts of the present case.

The fact that there are indeed disputes between the parties is evident from the stand taken by the respondents and also the documents disclosed before the Court. Admittedly, the respondents do not have a defence to accepting Rs.16 lakhs and odd from the petitioner but not taking any steps in terms of the Assignment Agreement. Although, this is disputed by the respondents, the Court is of the view that the Arbitrator would have complete jurisdiction over such matters. The dispute in any event is relatable to the arbitration agreement.

AP/38/2024 is accordingly allowed and disposed of by appointing Ms. Urmila Chakraborty, counsel to act as the Arbitrator subject to the learned Arbitrator communicating her 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 23<sup>rd</sup> February, 2024 along with the requisite details of the contact person of the petitioner.

Since the respondents have not filed any affidavits, the allegations made in the petition are deemed not to be admitted. Needless to say, the findings of this Court will be treated as limited to this present application.

(MOUSHUMI BHATTACHARYA, J.)

bp.