

OCD-7

ORDER SHEET

AP-COM/418/2024

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

M/S. DABRI HEIGHTS P. LTD. AND ORS.
VS
M/S. SWANHOUSING AND INFRA P. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 29th February, 2024.

Appearance:

Mr. Supratim Laha, Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Ajay Gaggar, Adv.

Mr. Uttiyo Mallick, Adv.

The Court: There are 66 petitioners before the Court. 31 of the 66 entered into a Joint Venture Agreement with the respondent for construction of highrises on the land in question. The respondent would make the construction in accordance with the terms of the JVA. The remaining 32 entered into another JVA for the same purpose. Both the JVAs are dated 6th September, 2014.

The petitioners, according to learned counsel, consolidated the 2 JVAs and the parties proceeded in accordance with the terms thereof. The petitioners later came to know that instead of constructing highrises, the respondent was

in the process of constructing row-houses. The petitioners accordingly terminated the contract on 21st September, 2023 including for the damages suffered by the petitioners amounting to Rs.128 crores. The petitioners also invoked the arbitration agreement contained in the JVAs on 13th November, 2023. The respondent replied on 24th November, 2023 stating that the respondent was keen to amicably resolve the dispute.

Learned counsel appearing for the respondent submits that there cannot be any consolidated reference since there are 2 separate JVAs. Counsel also submits that the arbitration clause provides for parties making an attempt to amicably resolve the dispute between them. Counsel also relies on a mail of 10th June, 2023 sent by the petitioner containing certain modified terms in respect of the JVA.

None of the points taken by the respondent are considered to be sufficient for appointing an Arbitrator. The mail of 10th June, 2023, allegedly modifying the terms of the JVA, is not a signed document. Although there is no evidence of any letters being exchanged on the amicable resolution of disputes, the arbitration clause makes it clear that the dispute would be referred to arbitration if they continue to exist. There is little doubt that there is indeed a serious dispute between the parties including the projected estimation of damages of Rs.127 crores.

There are several decisions which show that composite reference is the order of the day where the disputes are identical and the terms of the

agreements are also identical. The disputes brought to this Court fall under both of the conditions.

In any event, save and except of the respondent intending to resolve the matter on amicable terms, the respondent does not appear to have a defence of the claims raised by the petitioners, which are in any event within the domain of the Arbitrator for adjudication.

AP-COM/418/2024 is accordingly allowed and disposed of by appointing Mr. Ramasubramanian, former Judge of the Supreme Court, to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioners' advocate-on-record shall communicate this order on the learned Arbitrator by 2nd March, 2024 along with the requisite details of the contact person of the petitioners.

It is made clear that the views of this Court are restricted to the present application. The allegations made in the petition are deemed not to have been admitted since affidavits have not been called for.

(MOUSHUMI BHATTACHARYA, J.)