

OCD-11

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

AP-COM/457/2024

SK DUDHORIA HOLDINGS PVT LTD.
VS
VIPUL LTD AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 10th September, 2024

Appearance:
Mr. Aniruddha Mitra, Adv.
Mr. Debraj Sahoo, Adv.
Mr. Souvik Kundu, Adv.
...for the petitioner

The Court:- Despite service, none appears for the respondents.

Affidavit of service filed today be kept on record.

As it transpires from the application under Section 11 of the Arbitration and Conciliation Act, 1996 and its annexures, the parties had a dispute, which prompted the petitioner initially to move the National Company Law Tribunal but later to withdraw the same, upon which a Memorandum of Understanding was entered into between the parties in writing on September 18, 2021. The said agreement, which is annexed to the present application, contains an arbitration clause in Clause 8. In terms of the clause, all disputes between the parties arising out of the agreement are referable to arbitration.

Subsequently, there was a termination of the agreement at the behest of the petitioner. Thereafter, by a communication dated February 23, 2022, the respondent no. 1 had agreed to a mutual understanding between the parties, upon which the agreement was revived upon recalling the termination, thereby modifying only the repayment schedule in the said Memorandum of

Understanding/agreement dated September 18, 2021. In the said communication, as admitted by the respondent no. 1, apart from the alteration of the repayment schedule, nothing in the said agreement was touched, modified and/or altered. Thus, prima facie, both parties proceeded on the premise that the Memorandum of Understanding dated September 18, 2021 was revived and only the payment schedules were altered.

Hence, the question as to whether the said alteration tantamounted to a novation of the contract, at best, is arguable. On the face of it, it transpires that both parties proceeded on the premise that there was no novation but a minor alteration of the repayment schedule only. Be that as it may, it would be beyond the charter of the Section 11 Court to enter into the merits of such disputes, if at all raised, and it would only be appropriate to leave all questions to be decided by the learned Arbitrator, as and when appointed.

Accordingly, AP-Com/457/2024 is allowed, thereby appointing Mr. Sayak Chakraborty, [Mob:9830069300], a member of the Bar Library Club, as the sole arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator. The learned Arbitrator shall fix his own remuneration in consultation with the parties and within the framework of 1996 Act, in particular the Fourth Schedule thereof.

(SABYASACHI BHATTACHARYYA, J.)