

OCD-8

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

AP-COM/578/2024

AMITA SARKAR
VS
M/S. ANNAPURNA BUILDERS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 28th June, 2024

Appearance:
Mr. Dinabandhu Chowdhury, Adv.
Mr. Iresh Paul, Adv.
...for the petitioner

Mr. Pradyat Saha, Adv.
...for the respondent

The Court:- Learned counsel for the petitioner submits that in terms of Clause 18 of the agreement between the parties, there was a provision for arbitration. Such clause was invoked by the parties. The claimant, who is the respondent herein, appointed a nominee. Subsequently, the present petitioner also appointed a nominee as Arbitrator.

In terms of Section 11(3) of the Arbitration and Conciliation Act, 1996, it is contended that the two nominees have to agree on the third arbitrator. In the present case, however, the third Arbitrator was appointed unilaterally by the nominee of the claimant, as such, vitiating such nomination as a whole.

It is further alleged that the due provisions of the appropriate Schedules of the 1996 Act were not complied with by giving proper declarations even by the nominee of the claimant.

Such contentions are disputed by learned counsel for the claimant/respondent. Learned counsel submits that the nominee of the claimant duly wrote to his counter-part appointed by the present petitioner for appointment of a third arbitrator. There being no reply from the end of the nominee of the present petitioner, the Arbitrator had to be appointed.

However, the process adopted by the nominee of the claimant/present respondent is unknown to law. Section 11(3) of the 1996 Act is categorically specific on the consensus mandatorily to be reached between the two nominees of the parties for appointment of a third Arbitrator. In case no consensus can be arrived at, it falls within the domain of the Court sitting under Section 11(6) to resolve such issue by appointing a third Arbitrator.

As such, a sufficient case has been made out by the petitioner for appointment a third Arbitrator, since the unilateral appointment of a third Arbitrator by the nominee of the claimant stands vitiated, being void *ab initio* and *ex facie* a nullity in the eye of law.

Insofar as the allegation of non-compliance of the provisions of the statute by the nominee of the claimant in the first place by not furnishing the required disclosures as required in law, it is open, by dint of the *kompetenz-kompetenz* principle, that the said challenge is taken before the arbitral tribunal itself. This Court, thus, chooses not to enter into the merits of such allegation.

In view of the above, AP-COM/578/2024 is allowed, thereby appointing Mr. Partha Pratim Roy (Mobile No.- 9874135485) as the third Arbitrator. It is excepted that the three appointed Arbitrators shall make all endeavour to dispose of arbitral proceeding at the earliest. The above appointment of Mr. Roy,

Advocate shall be subject to obtaining a declaration under Section 12 of the 1996 Act from the said learned Arbitrator. With regard to the remuneration of the Arbitrators, the same shall be decided by the arbitral tribunal in consonance with the provisions of the 1996 Act and the Schedules thereto. It is kept open for the petitioner to challenge the competence of the nominee of the claimant to act as an arbitrator before the Arbitral Tribunal itself under the appropriate provision of law.

Affidavit of Service filed in Court be kept with the records.

(SABYASACHI BHATTACHARYYA, J.)