

ORDER SHEET

AP-COM/636/2024

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

MERLIN PROJECTS LIMITED
VS
SINGHANIA MERLIN ESTATE AND OTHERS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 8th October, 2024.

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Jishnu Chowdhury, Adv.

Ms. Srinjita Ghosh, Adv.

Mr. Debdut Hore, Adv.

..for the petitioner

Mr. D. Ghosh, Adv.

Mr. C. Biswas, Adv.

Mr. S. Ghosh, Adv.

..for the respondents

The Court: No affidavit-in-opposition has been filed in Court pursuant to previous directions.

Learned senior counsel appearing for the petitioner submits that there is extreme urgency in the matter in view of the respondents having approached the Chhattisgarh High Court with a similar application under Section 11 of the Arbitration and Conciliation Act, 1996 to steal a march over the petitioner, despite the present application under Section 11 having been filed earlier on June 11, 2024.

Learned senior counsel takes the Court through the arbitration clause which covers the dispute which has now arisen between the parties.

Learned senior counsel for the petitioner next points out that the registered office of the partnership firm, the dissolution of which and ancillary reliefs are the subject-matter of the proposed arbitration, is situated within the territorial jurisdiction of this Court. Moreover, a part of the properties is also situated within the territorial jurisdiction of this Court.

In view of the provisions of Section 11 of the 1996 Act, if two High Courts have jurisdiction to take up Section 11 applications, the one approached first gets to decide the application. Accordingly, the present application is taken up for hearing, since the application under Section 11 before the Chhatisgarh High Court was filed after the present application.

Upon a perusal of the arbitration clause and the connected documents annexed to the application, it is evident that there is an arbitrable dispute between the parties.

Since the said dispute is covered by the arbitration clause in the agreement between the parties as well as the issue is otherwise arbitrable, there cannot be any impediment in referring the matter to arbitration.

At this juncture, learned counsel appearing for the respondents belatedly seeks an adjournment in the matter. It is also sought to be projected that in Clause 46 in an agreement between the parties dated March 16, 2007, it is provided that the Raipur Civil Courts shall have territorial jurisdiction over the matter.

Clause 46, which is relied on by the respondents, is a part of one of the agreements between the parties, being a development agreement. The

said clause provides that if any dispute arises between the parties, then the proceedings and hearing of that shall only be at Raipur and at first, there shall be conciliation by the sole arbitrator named therein within a maximum period of three months under the provisions of the Arbitration and Conciliation Act, 1996. If the Arbitrator refuses to resolve the dispute or expresses his inability to do so, then the said dispute shall be decided by the Civil Courts at Raipur.

In view of there being conflicting clauses in two documents, the development agreement and the partnership deed, the one which is more comprehensive with regard to the parties' intention to refer the dispute to Arbitrator ought to be taken as the guideline for the purpose of deciding an application under the Arbitration and Conciliation Act, 1996. Clause 46 mentions a named person as a "sole Arbitrator"; however, the function designated for such person is not arbitration but conciliation between the parties.

As such, it cannot be said that the arbitral seat has been designated to be in Raipur. That apart, it has been stated thereafter in Clause 46 of the agreement relied on by the respondents that on the failure of the designated person to resolve the dispute or on his expression of inability to do so, the dispute shall be decided by the Civil Courts, Raipur.

The decision of a dispute by a Civil Court, by no stretch of imagination, can be deemed to be an arbitral proceeding.

Hence, the argument of the respondents that the arbitral seat has been designated in Raipur is not tenable in the eye of law or on the factual matrix of the case as well.

Thus, we have to fall back upon Clause 18 of the partnership agreement, which is the primary agreement within the conspectus of which the present dispute has arisen, for the purpose of ascertaining whether any particular place has been designated as the seat of arbitration. A perusal of Clause 18 of the same clearly shows that no such seat has been designated at all.

Hence, the provisions of Sections 16 to 20 of the Code of Civil Procedure would apply. Going by the said standard, as mentioned earlier, the registered office of the partnership firm is in Kolkata as well as a part of its assets/properties are located within the territorial jurisdiction of this High Court. Thus, this Court has territorial jurisdiction to entertain and decide the present application under Section 11 of the 1996 Act.

In such view of the matter, there cannot be any hindrance to the matter being referred to arbitration.

Accordingly, AP-COM/636/2024 is allowed on contest, thereby appointing Justice Alope Chakrabarti, a retired Judge of this Court and the Allahabad High Court, as the sole Arbitrator to resolve the disputes between the parties, upon a declaration being obtained from him under Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration in consultation with the parties within the framework of the 1996 Act and its Fourth Schedule.

It is made clear that the above observations are not conclusive so far as the rights of the parties are concerned and it will be open to the parties to

urge all points, including the point of jurisdiction of the arbitral Tribunal, before the Tribunal itself.

(SABYASACHI BHATTACHARYYA, J.)

bp/ R.Bhar