

ORDER SHEET

AP-COM/267/2024
[Old case no. AP/373/2022]

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

DR SOUMEN ROY AND ORS.
VS
M/S SYNDICON PROJECTS AND CONSTRUCTION (P) LTD. AND ORS.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 15th May, 2024.

Appearance:
Mr. Shounak Mukhopadhyay, Adv.
Mr. Sayantan Bose, Adv.
Ms. Ankita Choudhury, Adv.
Ms. Manisha Das
...for the petitioner

Mr. Devajyoti Barman, Adv.
Ms. Sanjukta Basu Mallick, Adv.
...for the respondents

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

The disputes between the parties arise out of a development agreement dated 28th February, 2013. Clause XVI of the agreement provides as follows:-

“XVI. ARBITRATION:

- a) The parties raising disputes shall serve a notice to the other party at the address mentioned hereinabove or to its last known address detailing therein the grievances and/or differences and within 30 days of receiving such notice, there would be a joint meeting between the parties for amicable settlement of the disputes and/or for meeting the grievances of

the concerned parties. In case the disputes cannot be settled in the said meeting or within any mutually extended time then either party could take recourse to arbitration proceedings as mentioned here-in-below.

- b) All disputes and differences between the parties hereto with regard to interpretation of this agreement and/or for implementation and/or in any way relating to or touching in any manner with this agreement or arising in pursuance thereof shall be referred to arbitration and the said arbitration will be governed by the Arbitration and Conciliation Act, 1996.
- c) The award passed by the Arbitrator/Arbitrators shall be binding upon the parties and both the parties shall accept the award passed by the Arbitrator/Arbitrators.”

The immovable property which is the subject-matter of the aforesaid agreement is situated at Mouza- Keranitola, Holding No. 188/3, R.S. Plot No. 271 (P), L.R. Plot 1426 (P), L.R. Khatian No. 2207, J.L. No. 171 under Police Station- Kotwali under Midnapore Municipality, District- Paschim Midnapore, Pincode-721101, West Bengal.

Briefly, it is submitted on behalf of the petitioner that pursuant to negotiations and discussions, the parties entered into an agreement dated 28th February, 2013 wherein the respondent developer was obliged to develop the aforesaid premises. Pursuant to the above agreement, the parties have also executed a Power of Attorney dated November 8, 2016. It is alleged that, the respondents have failed and refused to complete the construction as envisaged in the said agreement. There has also been breach of obligations insofar as the payments to the petitioners are concerned. There are also deficiencies in the constructed building.

In such circumstances, the petitioner was compelled to issue a notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 18th January, 2021. By a response dated 30th January, 2021, the respondent refuted the allegations contained in the said letter.

I have considered the materials on record.

It is ex facie evident that there are disputes and differences arising out of the aforesaid arbitration clause are covered under the agreement dated 28th February, 2013. There is also a suit pending before the District Court at Paschim Medinipur which also involves a third party not bound by the aforesaid agreement.

In such circumstances, in view of the live and arbitral disputes arising out of the aforesaid agreement and covered by the arbitration clause, AP-COM/267/2024 stands disposed of by appointing the Hon'ble Ms. Justice Nadira Patherya (Retired) as the Sole Arbitrator to adjudicate the disputes by and between the parties and 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 Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 7 days from the date of passing of this order.

(RAVI KRISHAN KAPUR, J.)