

OCD-27

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

AP-COM/10/2023

YORK FINANCIAL SERVICES PVT LTD
VS
COMPUTER PRIDE LTD AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 22nd April, 2024.

Appearance:
Ms Soni Ojha, Adv.
Ms. Sonia Nandy, Adv.

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

The disputes between the parties arises out of a development agreement dated 5th December, 2019.

The respondent nos. 2-8 are the owners of Premises No.31, Upendra Banerjee Road, Parnasree Pally, P.O.- Parnasree, Kolkata-700060.

Briefly, pursuant to an agreement for sale of a commercial space, the parties jointly agreed to sell and develop the premise on terms and conditions morefully contained therein. The petitioner at the time of execution of the agreement had made an advance payment of approximately Rs.70 lakhs to the

respondent. Thereafter, the petitioner also advanced a further sum of Rs.30 lakhs in terms of the agreement, which was duly received by the respondent.

It is alleged that contrary to and in violation of the terms of the agreement, the respondents having received and appropriated the entire amount have failed to honour their obligations.

Clause 18 of the agreement, provides as follows:

“18. Disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively Disputes) shall be referred to the arbitration and finally resolved through arbitration under the Arbitration and Conciliation Act, 1996, with modification made from time to time. In this regard, the Parties irrevocably agree that (1) the place of arbitration shall be Kolkata, (2) the language of the arbitration shall be English, (3) the Arbitrator shall have summary powers and be entitled to give interim awards/ directions regarding the Disputes and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law and (4) the interim/ final award of the shall be binding on the Parties.”

None appears on behalf of the respondents nor is any accommodation prayed for on their behalf. The matter has appeared on repeated occasions when the respondents have been unrepresented. Pursuant to earlier orders of Court, the respondents have also effected substituted service by way of newspaper publication. In such circumstances, it is evident that there has been good and proper service and the respondents have deliberately chosen not to appear. The disputes by and between the parties are covered under the arbitration agreement.

Accordingly, Mr. Amitesh Banerjee, Senior Advocate is appointed as Sole 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 Advocate on Record of the petitioner shall communicate

this order to the Learned Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP-COM/10/2023 stands disposed of.

Affidavit of Service by the petitioner be kept with the records.

(RAVI KRISHAN KAPUR, J.)

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