

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
[COMMERCIAL DIVISION]

AP-COM/278/2025

SURJA KANTO BHAR
VS
SAYANTAN BHATTASALI AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 9th June, 2025

Appearance:
Mr. Shiv Shankar Banerjee, Adv.
Ms. Arijita Ghosh, Adv,
Mr. Abhishek Chakraborty, Adv.
... for petitioner.
Mr. Suman Basu, Adv.
Ms. Debapriya Ghosh, Adv.
... respondent nos. 1 to 5.

1. This is an application for appointment of a learned Arbitrator for adjudication of the dispute which has arisen between the parties. The respondent nos. 1, 3, 4 and 5 are the promoters. The respondent no.2 is one of the land owners. The respondent no.1 although is engaged for the promotion of the premises also has a share in the land.
2. The respondent nos. 1 to 5 are represented by Mr. Suman Basu, learned Advocate.
3. The respondent nos. 6 and 7 have refused service.
4. Affidavit-of-service is taken on record. Thus, service upon the respondent nos. 6 and 7 are treated as good service, in view of the refusal.

5. It appears that disputes had arisen between the parties in respect of a development agreement. The said agreement contains an arbitration clause, which states that all disputes and differences including interpretation and construction of the agreement shall be referred to the arbitration of two independent arbitrators, one to be appointed by each party and the umpire to be jointly appointed by the nominees of the parties. The Courts of Chandernagore shall have the exclusive jurisdiction to entertain, try and determine any application.
6. It appears that the cause of action has arisen within the jurisdiction of this Court and this Court, as a referral Court, can entertain this application. The issue with regard to whether the dispute is a commercial or non-commercial one, is already pending before the learned Commercial Court at Rajarhat.
7. This Court is of the view that at the referral stage this Court is not required to decide such issue. Thus, this question is kept open. In any event, the dispute between the parties is covered by an arbitration clause. The referral Court is only required to refer the dispute to arbitration in terms of the clause without expressing any opinion as to the maintainability, arbitrability, admissibility, limitation etc. The question whether this is a commercial dispute or not is also not relevant for the referral Court to embark upon a discussion and deliberation thereof. This issue can be decided at the appropriate stage.

8. Under such circumstances, all issues raised by Mr. Basu, including the fact that the disputes are not arbitrable and premature, are kept open to be decided by the Tribunal.
9. A notice under Section 21 of the Said Act was issued and the petitioner had nominated a learned Arbitrator. However, the respondent did not agree to such proposal, and failed to reply to the said notice. Both the parties submit before the Court through their learned Advocates that a sole Arbitrator may be appointed by the Court for settlement of the disputes as the mechanisms provided in the agreement had failed. The parties agree that a sole Arbitrator be appointed for convenience of the parties.
10. Accordingly, the application is allowed by appointing Mr. Debasish Roy, learned Senior Advocate, Bar Association Room No. 2 as the sole Arbitrator to arbitrate upon the disputes between the parties.
11. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.
12. The application being AP-COM 278 of 2025 is disposed of.

(SHAMPA SARKAR, J.)