IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 01.04.2026
DELIVERED ON: 27.04.2026

PRESENT:
HON'BLE JUSTICE GAURANG KANTH

AP-COM 835 OF 2025

BALURGHAT CO-OPERATIVE LABOUR CONTRACT AND CONSTRUCTION SOCIETY & ANR.

VERSUS

DEBABRATA SARKAR AND ANR.

Mr. Soumya Ray, Adv.
Ms. Anwesha Saha, Adv.
Ms. Reshmi Mukherjee, Adv.
Mr. Ashok Halder, Adv.

..... for the petitioners

Mr. Srijan Nayak, Adv.
Ms. Rituparna Moitra, Adv.
Mr. Saurav Chaudhuri, Adv.

..... for the respondent No. 1

Mr. Prisanka Ganguly, Adv.

...for the respondent no.2

JUDGMENT

Gaurang Kanth, J.:-

1. The present Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator for adjudication of disputes that have arisen between the parties out of a Development Agreement dated 06.01.2022, registered on 14.01.2022, executed between the Petitioners and Respondent No. 1.

2. The facts giving rise to the present Petition are set out hereunder:

3. Petitioner No. 1 is a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1961, and Petitioner No. 2 is its Director. The Petitioners are engaged in the business of civil construction and infrastructure development. Respondent No. 1 is the owner of land measuring 14.82 and 14.81 decimals, purchased from Balurghat Town Commercial Company Ltd., being R.S. Plot No. 202, L.R. Khatian No. 2353, L.R. No. 723, Mouza – Khadimpur, J.L. No. 110, P.S. Balurghat, Premises No. 17/12, Ward No. 22, under Balurghat Municipality.

4. Petitioner No. 2, on behalf of Petitioner No. 1, entered into a Development Agreement dated 06.01.2022 (registered on 14.01.2022) with Respondent No. 1 for construction of two six-storied buildings comprising 55 residential units, 35 commercial units, and associated car parking spaces.

5. It is the case of the Petitioners that Respondent No. 2 subsequently expressed willingness to invest in the said development project, pursuant to which a supplementary agreement dated 09.11.2022 was executed between Petitioner No. 2 (in his capacity as Director of Petitioner No. 1), Respondent No. 1, and Respondent No. 2. However, the said tripartite arrangement did not subsist, as Respondent No. 2 exited the project without any formal communication.

6. Thereafter, a final arrangement was arrived at between the Petitioners and Respondent No. 1, whereby it was agreed that the Petitioners would retain the sale proceeds of all residential units, commercial units, and car parking spaces, except for 9 units (flats/shops) allocated to Respondent No. 1.

7. In furtherance of the said arrangement, Respondent No. 1 executed a General Power of Attorney dated 24.02.2025 (registered on 25.02.2025) in favour of Petitioner No. 2, authorising him to act on behalf of Respondent No. 1 in respect of the owner's allocation, including execution of deeds and completion of necessary formalities.

8. Pursuant thereto, Petitioner No. 2 entered into multiple agreements for sale concerning the said 9 units, and payments aggregating to Rs. 3,80,55,582/- were remitted to Respondent No. 1.

9. Subsequently, disputes arose between the parties in relation to, inter alia, accounting of sale proceeds, alleged excess remittances, and issues concerning registration of conveyances. Thereafter, by letter dated 18.06.2025, Respondent No. 1 purported to revoke the aforesaid registered Power of Attorney.

10. The Petitioners, by letter dated 20.08.2025, raised their claims and called upon the Respondents to resolve the disputes. However, in the absence of any response, the Petitioners invoked the arbitration clause contained in Section XVI(3) of the Development Agreement dated 06.01.2022 (registered on 14.01.2022), by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. The said notice was addressed to Respondent No. 1, with a copy marked to Respondent No. 2.

11. Despite receipt of the said notice, the Respondents failed to respond or take any steps towards resolution of the disputes.

12. In these circumstances, the Petitioners have approached this Hon'ble Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

Submissions on behalf of the Petitioners

13. Mr. Soumya Roy, learned counsel for the Petitioners submits that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is fully maintainable, as the Development Agreement dated 06.01.2022 (registered on 14.01.2022) contains a valid and binding arbitration clause governing the disputes between the parties. It is contended that disputes have arisen in relation to accounting of sale proceeds, alleged excess remittances, and the unilateral revocation of the registered General Power of Attorney, all of which squarely fall within the scope of the arbitration clause. Despite issuance of a notice invoking arbitration under Section 21 of the Act, the Respondents have failed to respond or take steps for constitution of the Arbitral Tribunal, thereby necessitating the present petition.

14. It is further submitted that Petitioner No. 1, being a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1961, is not precluded from invoking arbitration in the facts of the present case. The dispute does not pertain to the internal affairs or management of the Society, but arises out of a commercial development agreement entered into with third parties. In such circumstances, there is no statutory embargo under the said Act against reference of disputes to arbitration. In support, reliance is placed on ***Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. v. Ajay Sales & Supplies*** reported as ***2021(17) SCC 248*** and Judgment of Karnataka High Court in ***CMP 04/2025, titled as Sri Ramakrishna House Building Co-operative Society v. M/s Skilltech Engineers & Contractors Pvt. Ltd***.

15. Learned counsel further submits that the tripartite agreement dated 09.11.2022 executed between the Petitioners, Respondent No. 1, and Respondent No. 2 is merely a continuation and extension of the original Development Agreement. It is argued that Respondent No. 2, having entered into the transaction as an investor and being directly involved in the performance of the project, is bound by the terms of the principal agreement, including the arbitration clause, as the agreements form part of a composite transaction.

16. It is further contended that the disputes raised are ex facie arbitrable and do not fall within any of the limited categories of non-arbitrable disputes as settled by the Hon'ble Supreme Court in ***Vijay Drolia v. Durga Trading Corporation*** reported as ***2021 (2) SCC 1***. The present disputes are purely contractual in nature and do not involve any element that would render them non-arbitrable. In view of the limited scope of examination under Section 11 of the Act, this Hon'ble Court is only required to prima facie ascertain the existence of a valid arbitration agreement.

17. In these circumstances, it is submitted that the disputes between the parties are live and arbitrable, and in view of the failure of the Respondents to act upon the invocation notice, this Court ought to exercise its jurisdiction under Section 11(6) of the Act and appoint a Sole Arbitrator to adjudicate the disputes between the parties.

Submission on behalf of the Respondent No.1

18. Learned counsel for Respondent No. 1 submits that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable in view of the statutory bar contained under Sections 108 and 109 of the West Bengal Co-operative Societies Act, 1961.It is contended that Section 108 of the said Act provides for reference of disputes touching the constitution, management, or business of a co-operative society to the Registrar, while Section 109 bars the jurisdiction of civil courts and other fora in respect of such disputes. It is contended that Petitioner No. 1 is admittedly a Co-operative Society, and the disputes, as pleaded by the Petitioners themselves, arise in connection with transactions involving a Co-operative Bank, namely the Dakshin Dinajpur District Central Co-operative Bank. In such circumstances, the special statutory mechanism provided under the said Act for adjudication of disputes would prevail, thereby excluding recourse to arbitration under the Arbitration and Conciliation Act, 1996.

19. Learned counsel further draws attention to the pleadings in the petition to submit that it is the Petitioners' own case that Respondent No. 1, in his capacity as Director of the said Co-operative Bank, persuaded Petitioner No. 2 to enter into dealings with the Bank and obtained signatures on blank papers. It is thus contended that the substratum of the dispute is intrinsically connected with the affairs and business of a Co-operative Society/Co-operative Bank. Consequently, the dispute is essentially one which falls within the scope of Sections 108 and 109 of the West Bengal Co-operative Societies Act, 1961, and is required to be adjudicated by the statutory forum prescribed therein, thereby rendering the present proceedings under Section 11 not maintainable.

20. In support of the aforesaid contention, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*** reported as ***2008 (4) SCC 755***, wherein it has been held that where a special statute provides for an exclusive forum for adjudication of disputes, the jurisdiction under the Arbitration and Conciliation Act stands excluded. It is thus submitted that the Petitioners cannot bypass the statutory remedy under the Co-operative Societies Act by invoking arbitration.

21. Without prejudice to the above, learned counsel fairly submits that the existence of the Development Agreement dated 06.01.2022 and the arbitration clause contained therein is not in dispute, and it is also not disputed that certain differences have arisen between the parties. However, in view of the statutory bar and the nature of disputes as disclosed in the pleadings, the same are not arbitrable and the present petition deserves to be dismissed.

Submission on behalf of the Respondent No. 2

22. Learned counsel for Respondent No. 2 submits that the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable as against Respondent No. 2, inasmuch as Respondent No. 2 is not a party to the arbitration agreement contained in the Development Agreement dated 06.01.2022. The invocation of arbitration is founded solely on the said Development Agreement, to which Respondent No. 2 is admittedly not a signatory. It is contended that the subsequent tripartite agreement dated 09.11.2022 does not amount to a continuation or incorporation of the terms of the original Development Agreement, nor does it bind Respondent No. 2 to the arbitration clause contained therein. In the absence of a clear and unequivocal arbitration agreement binding Respondent No. 2, no reference to arbitration can be made against it.

23. It is further submitted that Respondent No. 2 had merely expressed an intention to invest in the project and had entered into the tripartite arrangement on a limited understanding. However, upon finding that the project was not financially viable, Respondent No. 2 independently exited the arrangement at an early stage and has had no further role or involvement in the project. The present disputes, as raised by the Petitioners, pertain to alleged financial transactions, accounting issues, and revocation of power of attorney between the Petitioners and Respondent No. 1, with which Respondent No. 2 has no nexus whatsoever. Accordingly, Respondent No. 2 cannot be compelled to participate in arbitral proceedings concerning disputes to which it is neither a necessary nor a proper party.

24. Learned counsel further submits that there has been no valid invocation of arbitration as against Respondent No. 2 in terms of Section 21 of the Act. The purported notice placed on record was issued to Respondent No. 1, with only a copy marked to Respondent No. 2. Such marking of a copy does not constitute a valid notice invoking arbitration against Respondent No. 2. In the absence of a proper notice invoking arbitration, the precondition for commencement of arbitral proceedings against Respondent No. 2 has not been satisfied. In these circumstances, it is submitted that the present petition, insofar as it seeks reference of disputes to arbitration against Respondent No. 2, is liable to be dismissed.

Legal Analysis

25. This Court has heard the submissions advanced by learned counsel for the parties and has perused the material placed on record.

26. At the outset, the objection raised by Respondent No. 1 with respect to maintainability on the ground that the Petitioner is a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1961, is considered. It is the contention of Respondent No. 1 that in view of Sections 108 and 109 of the said Act, the present dispute is not arbitrable as the same pertains to dealings involving a Co-operative Bank. However, this contention does not merit acceptance. A perusal of the pleadings and documents on record indicate that Respondent No. 1 has been arrayed in the present proceedings in his individual capacity as the owner of the subject property, who entered into the Development Agreement dated 06.01.2022 with the Petitioners. The mere allegation that Respondent No. 1 was, at some stage, associated with a Co-operative Bank or acted as its Director does not alter the nature of the present dispute, which arises out of a contractual arrangement concerning development of immovable property.

27. In this context, the reliance placed by Respondent No. 1 on the provisions of Sections 108 and 109 of the West Bengal Co-operative Societies Act, 1961 is misplaced, as the present dispute neither touches upon the constitution, management, or business of a Co-operative Society nor constitutes a dispute required to be adjudicated by the statutory forum under the said Act. On the contrary, the dispute is purely contractual in nature between the Petitioners and Respondent No. 1 in his personal capacity. The Hon'ble Supreme Court in ***Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd.*** *(supra)* support the proposition that disputes arising out of commercial transactions between a co-operative society and third parties are arbitrable. The ratio clearly recognizes that contractual disputes with third parties remain arbitrable notwithstanding the status of one party as a co-operative society. Similarly, in ***Sri Ramakrishna House Building Co-operative Society*** *(supra)*, the Karnataka High Court in an identical case has reiterated that disputes arising out of development or construction agreements entered into by a co-operative society with independent contractors or developers are purely commercial in nature and do not attract the bar under the Co-operative Societies enactments. The said judgment reinforces the principle that the determinative test is the nature of the dispute and not merely the character of one of the parties.

28. In the judgment relied upon by Respondent No. 1, namely ***Gujarat Urja Vikas Nigam Ltd.*** *(supra)*, the Hon'ble Supreme Court held that where a special statute creates a specific adjudicatory mechanism and confers exclusive jurisdiction upon a designated authority in respect of disputes arising under that statute, the jurisdiction of arbitral tribunals stands impliedly excluded. However, the ratio of the said judgment is applicable only where (i) the dispute arises directly under the special statute, and (ii) the statute evinces a clear intent to confer exclusive jurisdiction on a statutory forum. In the present case, neither of the aforesaid conditions is satisfied. The dispute does not arise under the West Bengal Co-operative Societies Act, 1961, nor does it involve adjudication of rights or obligations created by the said statute. Rather, the dispute emanates from a Development Agreement executed between the Petitioners and Respondent No. 1 in his individual capacity as the owner of the subject property. Therefore, the statutory mechanism under Sections 108 and 109 of the said Act is not attracted. Consequently, the ratio in ***Gujarat Urja Vikas***

Nigam Ltd. *(supra)* is clearly distinguishable and does not advance the case of Respondent No. 1.

29. Insofar as Respondent No. 2 is concerned, this Court is unable to accept the contention of the Petitioners that the arbitration clause in the Development Agreement dated 06.01.2022 can be invoked against it. While it is settled that, in appropriate cases, a non-signatory may be referred to arbitration under the "group of companies" or composite transaction doctrine, such reference is contingent upon a clear demonstration of a mutual intention to bind the non-signatory to the arbitration agreement, and the existence of a composite, interdependent transaction where performance of the agreements is so intrinsically linked that they cannot be segregated. In the present case, the subsequent tripartite agreement dated 09.11.2022 does not, prima facie, incorporate or adopt the arbitration clause contained in the Development Agreement, nor does it indicate any intention on the part of Respondent No. 2 to be bound by the said arbitration agreement. The said agreement appears to be an independent commercial arrangement whereby Respondent No. 2 expressed willingness to invest in the project. Further, the material on record indicates that Respondent No. 2 exited the arrangement at an early stage upon finding the project to be financially unviable, and there is no material to demonstrate its continued participation in the performance of the Development Agreement.

30. Significantly, the disputes raised by the Petitioners pertain to accounting of sale proceeds, alleged excess remittances, and consequences arising from revocation of the Power of Attorney, issues which arise out of obligations between the Petitioners and Respondent No. 1. These disputes are neither dependent upon nor inextricably connected with any obligation of Respondent No. 2. Thus, the requirement of a composite transaction, where the agreements are so interlinked that they must be performed together, is not satisfied. In the absence of (i) any express or implied incorporation of the arbitration clause, (ii) any demonstrated mutual intention to bind Respondent No. 2, and (iii) any inextricable linkage between the agreements, this Court is of the considered view that Respondent No. 2 cannot be compelled to arbitrate. The principles governing reference of non-signatories, as recognized in ***Vijay Drolia*** *(supra)*, do not extend to the facts of the present case.

31. Insofar as Respondent No. 1 is concerned, there is no dispute regarding the execution of the Development Agreement dated 06.01.2022 or the existence of the arbitration clause contained therein. Disputes have admittedly arisen between the Petitioners and Respondent No. 1. Applying the principles laid down in ***Vijay Drolia*** *(supra)*, this Court is required at this stage to undertake only a prima facie examination as to the existence of an arbitration agreement and the arbitrability of disputes. In the present case, this Court is satisfied that there exists a valid arbitration agreement between the Petitioners and Respondent No. 1, and that the disputes raised are arbitrable in nature.

32. In view of the above, the objection raised by Respondent No. 1 is rejected. The present petition is allowed insofar as it seeks reference of disputes between the Petitioners and Respondent No. 1 to arbitration. However, the petition is dismissed as against Respondent No. 2, as no arbitration agreement exists between the Petitioners and Respondent No. 2, and no valid notice under Section 21 of the Act has been issued to it.

33. Accordingly, this Court is prima facie satisfied that an arbitrable dispute exists between the Petitioners and Respondent No. 1, warranting appointment of a Sole Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Therefore, Justice Pranab Kumar Chattopadhyay, a former Judge, of this Court is appointed as the Sole Arbitrator to adjudicate the disputes between the Petitioners and Respondent No. 1, subject to furnishing disclosure in terms of Section 12 of the Arbitration and Conciliation Act, 1996.

34. The learned sole Arbitrator shall communicate his acceptance to the Registrar, Original Side within a period of two weeks from the date of communication of this order.

35. The learned Arbitrator shall be at liberty to fix his/her fees in accordance with the Fourth Schedule of the Act or as may be agreed between the parties.

36. All rights and contentions of the parties are kept open to be decided by the learned Arbitrator.

37. The petition is accordingly allowed against Respondent No. 1 and dismissed against Respondent No. 2.

(GAURANG KANTH, J.)

Sakil Amed P.A.