

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/31/2026

SRI MRITYUNJAY RAI
VS
MD SAJID AND ANOTHER

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH
Date : 31st March, 2026.

Appearance
Mr. Ayan Banerjee, Adv.
Mr. Suman Baanerjee, Adv.
...for the petitioner

The Court: This Court vide order dated 5th February, 2026 had directed the paper publication as well as service to be effected upon the learned Advocate for the respondents in the Civil Court.

Learned Counsel for the petitioner has filed his affidavit of service wherein service has been effected upon the Advocate in the Civil Court, and paper publication has also been carried out in terms of the said order dated 5th February, 2026. Affidavit of service is taken on record.

The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator.

Learned Counsel for the petitioner submits that a registered development agreement dated 7.11.2022 was entered into between the petitioner as owner of the subject property and the respondents as the developer for the purpose of development and construction of a multi storied building at the said property. It is submitted that in terms of the

development agreement the petitioner, being the owner, is entitled to 40% of the constructed area, whereas the respondents, being the developer are entitled to 60% of the constructed area.

Learned Counsel for the petitioner further submits that although multi storied building at the project site has already been completed, the respondents have failed and neglected to settle and handover the petitioner's share in terms of the development agreement dated 7th November, 2022. It is contended that the petitioner made several attempts to amicably resolve the dispute with the respondents, however, such attempts did not yield any result. Learned Counsel for the petitioner submits that the development agreement contains an arbitration clause being Article XVII of Clause 17.1 which provides that upon failure of amicable settlement between the parties, each party shall nominate an arbitrator and the two appointed arbitrators shall appoint the presiding arbitrator. It is submitted that the petitioner issued a notice dated 30th July, 2025 under Section 21 of the Arbitration and Conciliation Act invoking the arbitration clause and nominating Mr. Sourav Ghosh as the petitioner's nominee arbitrator. However, the said notice was returned with the postal endorsement "left".

Learned Counsel for the petitioner also submits that the petitioner had earlier approached the Court of Learned District Judge, Howrah Judges' Court by filing an application under Section 9 of the Act. By an order dated 27th August, 2025 the Learned Court granted interim relief in favour of the petitioner. The respondents had entered appearance in the said proceedings and the matter is still pending adjudication. It is submitted that despite invocation of the arbitration clause, the respondents have failed to nominate their arbitrator in terms of the development agreement. Consequently, the

petitioner has approached this Court seeking appointment of a nominee arbitrator on behalf of the respondent so that the arbitral tribunal can be constituted in accordance with the agreed procedure.

Having considered the submissions made on behalf of the petitioner and upon perusal of the materials on record, it appears that the existence of an arbitration agreement between the parties is not in dispute. The disputes arising out of the development agreement are also prima facie arbitrable.

In view of the failure of the respondents to nominate their arbitrator in terms of the arbitration clause, this Court deems it appropriate to exercise its power under Section 11 of the Arbitration and Conciliation Act, 1996. Accordingly, this Court appoints Mr. Arindam Banerjee, Learned senior Counsel (Mob- 9831236254) as an arbitrator on behalf of the respondents. The arbitrator nominated by the petitioner Mr. Sourav Ghosh and Mr. Arindam Banerjee, learned senior Counsel appointed as an arbitrator by this Court shall in terms of the arbitration agreement, appoint the presiding arbitrator and proceed with the arbitration in accordance with law.

The learned Arbitrators shall be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act.

The learned Arbitrator Mr. Banerjee shall make necessary disclosure in terms of Section 12 of the Arbitration and Conciliation Act prior to entering upon the reference.

All questions including limitation, maintainability of claims and jurisdiction are left open to be decided by the learned Arbitral Tribunal.

A copy of this order shall be communicated by the petitioner to the parties as well as the learned Arbitrator for necessary action.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

S. Mandi