

ORDER

OD - 17

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/101/2026
PAWAN KUMAR JAIN AND ORS
VS
M/S. AYKIZ CONSTRUCTION

BEFORE
HON'BLE JUSTICE GAURANG KANTH
Date: July 14, 2026.

Appearance:-
Mr. S. Patra, Adv.
...for petitioners.

The Court:- Affidavit of service is taken on record.

The petitioners have preferred the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitral tribunal for adjudication of the disputes arising out of registered Development Agreement dated 08.02.2023 executed between the parties.

The petitioners claim to be the lawful co-owners of a piece and parcel of vacant Shali land being Plot Nos. "B" and "C", admeasuring an aggregate of 4 Cottahs 10 chittacks 7 Sq. Ft. situated at Mouza-Kaikhali within the jurisdiction of Bidhannagar Municipal Corporation. The petitioners derive title through their predecessor-in-interest, late Kusum Jain who had acquired the said plots by virtue of a registered conveyance. Upon the demise of Smt. Kusum Jain on 01.10.2019, the petitioners succeeded the said property as her legal heirs and successors.

It is the case of the petitioners that the parties had entered into a Development Agreement dated 08.02.2023 whereby the respondent undertook to develop the said property by constructing a multi storied

residential building at its own cost and expenses. Under the terms of the agreement, the parties were entitled to an equal sharing of the constructed area. The respondent was responsible for obtaining all municipal/statutory sanctions and approvals for completing the project within the stipulated period of 24 months from the date of sanction extendable by a further period of 6 months. The agreement further provided for payment of liquidated damages at the rate of Rs.5,000/- per day in the event of delay attributable to the respondent. Pursuant to the agreement, the petitioners also executed a General Power of Attorney in favour of the respondent.

Learned counsel for the petitioners submits that despite repeated requests and reminders, the respondent failed to obtain the requisite sanctioned plan, commence construction or take any meaningful steps towards implementation of the project in terms of the development agreement. Learned counsel for the petitioners submits that the respondent remained in persistent breach of construction obligations under the Development Agreement. He further submits that a termination notice was issued on 08.09.2025 thereby terminating the Development Agreement and the General Power of Attorney. By the said notice, the petitioners also asserted claims towards liquidated damages against the respondent and called upon it to return all original deeds pertaining to the property.

The Development Agreement contains an arbitration clause providing for resolution of disputes through arbitration. The said clause contemplates appointment of one arbitrator by each party, with the nominated arbitrators appointing an umpire in accordance with law.

Learned counsel for the petitioners further states that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 24.12.2025 was issued invoking the arbitration agreement and nominating Mr. Pradeep Kumar (advocate) as the petitioners' nominee arbitrator. The respondent was called upon to nominate its arbitrator in terms of the agreed procedure enunciated in the development agreement. Despite receipt of the said notice, the respondent failed to respond and did not nominate the arbitrator within the stipulated period or thereafter.

Learned counsel for the petitioners submits that disputes have admittedly arisen between the parties in relation to the development agreement and the consequences flowing from its alleged termination. Thus, the respondent having failed to act in accordance with the agreed terms and procedure for constitution of the arbitral tribunal, the petitioners have invoked the jurisdiction of this Court under Section 11 (6) of the Act.

Having considered materials placed on record and the submissions advanced by the learned counsel for the petitioners, this Court finds that the Development Agreement dated 08.02.2023 contains a valid and subsisting arbitration agreement. The dispute sought to be referred arises directly out of the said agreement and is covered by the arbitration clause contained therein. The requirement of issuance of notice under Section 21 of the Act has also been duly complied with.

The respondent had failed to nominate its arbitrator despite service of the notice invoking arbitration under Section 21 of the Act, thereby frustrating the mechanism contemplated under the arbitration clause for appointment of the arbitrator.

It is now well settled principle of law that the jurisdiction of the court under section 11 of the Arbitration and Conciliation Act, 1996 is confined to a *prima facie* examination of the existence and validity of the arbitration agreement.

In view of section 11(6A) of the Act, *'the Supreme Court or as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall notwithstanding any judgment decree or order of any court, confine to the examination of the existence of an arbitration agreement'*.

Accordingly, at the stage of exercising jurisdiction under Section 11 of this Act, this Court is only required to examine the existence of a valid arbitration agreement containing an arbitration clause.

In view of the same, this Court is, therefore, satisfied that the requirements under Section 11(6) of the Act stand fulfilled and that the disputes between the parties are fit to be referred to arbitration.

This Court deems it appropriate to appoint a nominee Arbitrator on behalf of the respondent to adjudicate the disputes between the parties. In view of the same, Mr. Gopal Chandra Das, Advocate (Mob. No. 9831272911) is appointed as the nominee Arbitrator on behalf of the respondent.

Mr. Pradeep Kumar, Advocate, and Mr. Gopal Chandra Das, Advocate shall jointly appoint a Presiding Arbitrator, to constitute the Arbitral Tribunal.

The learned Arbitrators shall enter upon reference in due compliance with Section 12(5) of the Act.

The learned Arbitral Tribunal shall be entitled to fix its remuneration in terms of the Fourth Schedule to the Act.

A copy of this order shall be communicated to the learned nominee Arbitrators, to enable them to take necessary steps for constitution of the Arbitral Tribunal.

It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned Arbitral Tribunal, which shall decide the same in accordance with law.

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

(GAURANG KANTH, J.)

R. D. Barua