

AP/676/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONANJAN GOSWAMI
VERSUS
AMIT GUHA ROYBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 18th November, 2022.

APPEARANCE:

Mr. Ajay Debnath, Advocate
Mr. Pradip Kar, Advocate
Mr. Sujit Saha, Advocate
Ms. Kakali Ghosh, Advocate
..... for the applicant.Mr. Shaunak Ghosh, Advocate
Mr. Prasanta Kr. Bagchi, Advocate
..for respondent.

The Court:- Learned counsel for the applicant has pointed out that there was an arbitration agreement in the form of Management Contract dated 4th November, 2015 which contains the following arbitration clause:

“ARTICLE XX : RESOLUTION OF DISPUTES

11.1 The parties hereto have agreed to amicably settle and/or resolve all disputes and differences arising out of these presents amongst themselves but in the event any dispute of whatsoever nature is incapable of being resolved amongst the parties hereto amicably then and in that event the parties have agreed to refer all disputes and differences including the construction scope or effect of any of the terms and conditions herein contained and/or the determination of any right and/or liability and/or in any way touching or concerning these presents to the sole arbitration of an Arbitrator to be nominated by the parties hereto and the same would be deemed to be a reference

within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereto for the time being in force. The Arbitrator shall have summary powers and shall be entitled to lay down his own procedure and shall have power to give interim award and/or directions.

Courts within the jurisdiction of the Licensed Premises shall have jurisdiction to entertain and try all actions suits and proceedings arising out of these presents.”

He has further submitted that the notice dated 18th July, 2022 was served upon the respondent invoking the arbitration clause, yet the arbitrator has not been appointed by the respondent.

Learned counsel for the respondent has raised two objections - firstly, that in terms of the arbitration clause, attempts were required to be made to amicably settle, which have not been made and that since it is a management contract covered by Section 2(x) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, therefore, in terms of Section 10(2) of the Act, the application under Section 11 of the Arbitration Act, is required to be filed before the Commercial Division as the Commercial Division has been constituted in the Calcutta High Court.

Learned counsel for the applicant seeks time to examine the above aspect and respond to the same.

List on 2nd December, 2022.

(PRAKASH SHRIVASTAVA, C.J.)