

Millennium Infradevelopers Limited vs Jai Radha Raman Education Society ... on 4 January, 2022

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~18 (original)

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 622/2021
MILLENNIUM INFRADEVELOPERS LIMITED

..... Petitione

Through: Mr. Rajshekhar Rao, Sr. Adv.
with Ms. Vasudha Sharma, Ms. Mansi Sood
and Ms. Nikita Garg, Advs.

versus

JAI RADHA RAMAN EDUCATION SOCIETY THROUGH
ITS CHAIRMAN AND PRESIDENT Respondent
Through: Ms.Bani Dikshit, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR
O R D E R (O R A L)

%

04.01.2022
(Video-Conferencing)

1. Though an affidavit has been filed purportedly by the president of the respondent-society, it commences with a recital that the deponent to the affidavit is not authorised to represent the society.
2. Acknowledging this position, Ms. Bani Dikshit, learned Counsel for the deponent in the affidavit does not press the affidavit.
3. That being so, this is an uncontested petition as, despite notice having been issued, no authorised representative of the respondent has chosen to respond to the petition.
4. The petition has been preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking reference of the disputes between the parties to arbitration.
5. The disputes arise out of a Project Management and Construction Agreement dated 17th February, 2010, executed between the petitioner and the respondent, whereunder the petitioner was to provide construction and management services to the respondent in relation to a higher

education college being developed at Greater Noida.

6. Clause 11.7 of the Agreement provides for resolution of disputes between the parties by arbitration, and reads thus:

"11.7 In the event of any controversy, claim, or dispute arising out of or in relation to this Agreement, the Parties shall endeavour to resolve such disputes by mutual consultation. When the Parties are unable to resolve such disputes by consultation, the same shall be referred to a sole arbitrator to be appointed either mutually, or in the absence of mutual agreement between the Parties, by the Delhi High Court for arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996. The arbitration shall be in English and would be conducted at New Delhi in terms of the provisions of the Arbitration and Conciliation Act, 1996. The costs related to the arbitration shall be borne as decided in the award. Subject to the above, the Parties hereto specifically agree that the Courts at Delhi shall have exclusive jurisdiction with regard to any matter(s) arising out of and/or in connection with and/or in relation to and/or concerning this Agreement."

7. The petitioner is aggrieved by the alleged non-payment, by the respondent, of amounts stated to be payable to the petitioner against services rendered by the petitioner in terms of the Agreement.

Additionally, the petition asserts that the respondent has defaulted in reimbursing the petitioner for amounts paid by the petitioner to third parties on behalf of the respondent. A legal notice was issued by the petitioner to the respondent on 8th March, 2021 calling on the respondent to liquidate the petitioner's dues. The same letter proposed the names of three learned Senior Counsel of this Court, to call upon the respondent to agree to any one of the said learned Senior Counsel to arbitrate on the disputes between the parties.

8. The respondent having failed to respond to the said notice, the petitioner, having waited for 30 days from the date of issuance thereof, has preferred the present petition under Section 11(6) of the 1996 Act.

9. The outstanding amount payable to the petitioner is, according to the petition, 59,79,54,761/-.

10. Notice was issued in this matter on 16th July, 2021. Ms. Bani Dikshit had appeared in response to the notice. She submitted - as is also acknowledged in the affidavit filed by her client - that she represents the president of the society who is not authorised to represent it in these proceedings. Her request was that certain disputes, relating to the management of the society and the authority competent to manage the society are presently pending before a Coordinate Bench of this Court. She submits, as the chairman and the president of the society are not seeing eye to eye, a suit under Section 92 of the Code of Civil Procedure, 1908 ("the CPC"), by the wife of the chairman, has been filed before the Coordinate Bench, to appoint an administrator to oversee the affairs of the society. The prayer in this affidavit - which Ms. Dikshit did not press, but which this Court, has, nonetheless, examined - is to await the decision of the Coordinate Bench on the suit seeking appointment of an

administrator, before taking a decision on the present petition.

11. I see no reason whatsoever to do so. This is a petition under Section 11(6) of the 1996 Act. Disputes regarding the authority competent to manage the affairs of the society cannot be a reason to hold up decision on a Section 11 petition. As of date, apparently, no interlocutory orders have been passed by the Coordinate Bench, which could impede or restrain this Court from taking a decision on the present petition. The only issue that the Court has to consider in the present petition, in the light of Section 11(6) of the 1996 Act read with the judgment of the Supreme Court in *Vidya Drolia v. Durga Trading Corpn.*¹, an arbitrable dispute exists and whether there is any reason why the Court should not refer the disputes to arbitration, within the parameters laid down in the said decision.

12. That an arbitrable dispute exists is *prima facie* apparent from the assertions in the petition, which have not been traversed. The Court is not required, in exercise of its jurisdiction under Section 11(6), to take stock of any dispute pending inter se the authorities who seek to manage the affairs of the respondent society.

(2021) 1 SCC 1

13. In view thereof, I see no reason to keep these proceedings pending awaiting the outcome of the suit filed under Section 92 of the CPC before the Coordinate Bench.

14. As the respondent did not agree, by way of a reply, to arbitration of the dispute by any one of the three learned Senior Counsel suggested by the petitioner, such, this Court appoints Mr. Arun Bharadwaj, Senior Advocate (Address: I-8, Jangpura Extension, New Delhi -110015; Mobile No: +91 9810109681) to arbitrate on the disputes between the parties. The learned Arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act or as otherwise fixed by the learned Arbitrator in consultation with learned Counsel for the parties.

15. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

16. This petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J JANUARY 4, 2022/kr