

Green Builders & Promoters Private ... vs Shri Karam Singh & Ors on 14 February, 2019

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 663/2018

GREEN BUILDERS & PROMOTERS PRIVATE LIMITED

..... Petitioner

Through: Mr.Siddhesh Kotwal &
Mr.Raghunatha Sethupathy, Advs.

versus

SHRI KARAM SINGH & ORS. Respondents

Through: Mr.Umesh Kaushik & Mr.Nitin
Mishra, Advs.

+ ARB.P. 664/2018 & I.A. Nos.17409/2018, 2323/2019

M/S. GREEN BUILDERS & PROMOTERS PRIVATE LIMITED

..... Petitioner

Through: Mr.Siddhesh Kotwal &
Mr.Raghunatha Sethupathy, Advs.

versus

SHRI MAMCHAND & ORS. Respondents

Through: Mr.Umesh Kaushik & Mr.Nitin
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 14.02.2019

1. These petitions under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Collaboration / Development Agreement dated 09.11.2012 and the Supplementary Collaboration / Development Agreement dated 29.04.2013 executed between the parties. The Arbitration Agreement relied upon by the petitioner is contained in Clause 31 of the Collaboration Agreement and is reproduced herein under:-

"31. All disputes arising out of or in connection with this agreement shall be resolved by mutual discussions between the owners and developer within 15 (fifteen) days of the said dispute arising, failing which, such disputes shall be referred to conciliation

in terms of the Arbitration and conciliation Act, 1996 and any statutory modifications or re-enactments thereof. If the conciliation proceedings fails to resolve the disputes, then the disputes, will be referred for Arbitration to a mutually agreed sole Arbitrators, will be a condition precedent to any action under this agreement. This agreement shall be subject to the exclusive jurisdiction of courts of Jagadhari to the specific exclusion of all other courts and the venue for arbitration shall be at New Delhi alone. The arbitrator will be required to give a reasoned award within a period of 4 (four) months of entering the references."

2. A reading of the above Clause would show that it is mandatory for the parties to try and resolve their disputes through conciliation in terms of the Act before they can proceed with arbitration. Conciliation is to be held in terms of the Act and is therefore, of a statutory flavour with even the conciliated agreement being given a status of an award under Section 74 of the Act. The Agreement, therefore, is not simply calling upon the parties to try to resolve their disputes through mutual negotiations but makes a reference to the statutory provisions under the Act. In my opinion, therefore, the present petitions, being filed without undertaking this process, would be premature and not maintainable.

3. The learned counsel for the petitioner submits that attempts of conciliation made on 09.03.2018 had failed, however, the counsels for the respondents deny, any such attempts. In any case, such negotiations, even if undertaken, were not in accordance with the conciliation procedure presented in the Act and, therefore, is not of much relevance.

4. The learned counsel for the petitioner has placed reliance on the Judgment of the Supreme Court in *Demerara Distilleries Private Limited and Another vs. Demerara Distillers Limited*, (2015) 13 SCC 610 and of this Court in *Ravindra Kumar Verma vs. M/s BPTP Ltd. & Anr.*, (2015) 147 DRJ 175, to submit that merely because the petitioner has not undertaken the process of conciliation, the petition cannot be said to be premature and in any case the present petitions can be deferred while referring the parties to conciliation.

5. I am unable to agree with the submissions made by the learned counsel for the petitioner. In *Demerara Distilleries Private Limited (Supra)*, the Court was dealing with an Arbitration Agreement which provided for disputes to be first resolved through mutual discussion followed by mediation and only upon failure of mediation, recourse to arbitration was contemplated. The Court, referring to the elaborate correspondence by and between the parties, found that the attempt to resolve the disputes through mutual discussions and mediation is an empty formality. In that case, the Court was not dealing with a position where the parties have to take steps to first conciliate under the Act and only on failure thereof, invoke arbitration.

6. In *Ravindra Kumar Verma (Supra)*, the Court was again confronted with the position where the suit had been dismissed under Section 8 of the Act. The order was challenged before this Court. This Court held that though the Arbitration Agreement would require the parties to explore the possibility of conciliation and mutual resolution of disputes, the best course of action to be adopted is that before formally starting effective arbitration proceeding, the parties be directed to take up the

agreed procedure for conciliation.

7. In the present case as well, the Court is merely stating that the present petitions are premature at this stage and once the petitioner exhausts the other remedy procedure provided under the Agreement and is still not able to resolve the disputes with the respondents, then it is open to the petitioner to invoke the arbitration proceedings.

8. The counsels for the respondents have also raised an objection with regard to the territorial jurisdiction of this Court to entertain the present petitions. At this stage, I refrain from making any comment on the same. All submissions of either party shall remain open in any other proceedings initiated by either party.

9. The petitions are dismissed with the above observations and with no order as to cost.

NAVIN CHAWLA, J FEBRUARY 14, 2019/rv