

(2019) 11 CAL CK 0077
In the Calcutta High Court
Case No : Arbitration Petition (AP) No. 728 Of 2019

Asif Ahmed

APPELLANT

Vs

Mohammedan Sporting Club & Anr

RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 12(5)

Citation : (2019) 11 CAL CK 0077

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Suman Kumar Dutt, R. Dutt, A. P. Agarwalla

Final Decision : Allowed

Judgement

Ashis Kumar Chakraborty, J

The Court : This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016(in short the "the Act of 1996") for appointment of a sole Arbitrator to adjudicate the disputes between the parties herein relating to the agreement dated October 4, 2013 and the supplementary agreement dated March 24, 2015.

Clause 14 of the agreement dated October 4, 2013 signed by all the parties herein contemplates that any dispute or difference arising out of and in relation thereto, between the parties shall be adjudicated through arbitration of the sole Arbitrator named therein. The said clause records that the named Arbitrator is doing substantial legal work for the petitioner. By the supplementary agreement dated March 24, 2015 the parties modified some of the terms of the said agreement dated October 4, 2013. However, by virtue of clause 5 of the said supplementary agreement the arbitration agreement contained in clause 14 of the agreement dated October 4, 2103 remained binding upon the parties herein.

Disputes having arisen between the parties the petitioner invoked the arbitration agreement contained in clause 14 of the said agreement dated October 4, 2013

and by a letter dated September 24, 2019 informed the respondents that in view of the incorporation of sub-section (5) in Section 12 of the Act of 1996 and the Fifth and Seventh Schedule thereto the Arbitrator named in the arbitration agreement cannot adjudicate the disputes between the parties. By the said letter the petitioner requested the respondents to concur with the name of to the arbitrator named by him. None of the respondents, however, replied to the said letter dated September 24, 2019. Under the circumstances, the petitioner has approached this Court for appointment of an Arbitrator to adjudicate the disputes between the parties.

From the affidavit of service it appears that, copies of the application have been served on both the respondents. The respondents however remain unrepresented.

Considering the materials placed before me, I find that the procedure agreed by the parties for appointment of an Arbitrator has failed. Accordingly, the petitioner has substantiated ground for appointment of an independent Arbitrator by this Court under Section 11(6) of the Act of 1996.

Accordingly, Justice Tapan Kumar Dutt, a former Judge of this Court is appointed as sole Arbitrator to adjudicate the disputes between the parties. The Arbitrator will be free to fix his fees and engage secretarial staff for holding the arbitral proceeding.

The fees of the Arbitrator and the remuneration of the secretarial staff shall be borne by the parties in equal share.

The Arbitrator is requested to make and publish his award within eight months from the date of completion of the pleadings by the parties.

With the above direction, the application, A.P. No. 728 of 2019 stands allowed.