

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 22.07.2026
DELIVERED ON: 19.08.2026**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

AP-COM 33 OF 2024

**ROLTA INFRASTRUCTURE AND TECHNOLOGY SERVICES PVT LTD
VERSUS
DEPARTMENT OF INFORMATION TECHNOLOGY AND ELECTRONICS
GOVERNMENT OF WEST BENGAL**

Appearance:

**Mr. Sakya Sen, Sr. Adv.
Mr. Rohit Mukherji, Adv.
Mr. Pankaj Agarwal, Adv.
Ms. Champa Pal, Adv.**

..... for the petitioner

**Mr. Suman Kr. Dutt, Sr. Adv.
Mr. Paritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Tridibesh Dasgupta, Adv**

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes alleged to have arisen between the parties in relation to a registered Sub-Lease Agreement dated 04.07.2008.
- 2.** The facts which lead to the filing of the present petition are as follows:
- 3.** The Respondent, a department of the Government of West Bengal, had obtained a lease of approximately 10.052 acres of land from the Kolkata Metropolitan Development Authority by a Letter of Allotment dated 14.05.2007 for a period of 99 years. Thereafter, under a registered Sub-Lease Agreement dated 04.07.2008, the Respondent sub-leased

approximately 5 acres of the said land to the Petitioner for the unexpired lease period for the purpose of establishing an Information Technology and Electronics project.

- 4.** According to the Petitioner, the Sub-Lease Agreement contemplated that the Petitioner would develop the project within the stipulated period, while the Respondent was required to provide certain external infrastructure, including a power supply point, water line connection and sewerage outlet, as stipulated in Clause "h" of the Second Schedule to the Agreement. The Petitioner alleges that despite repeated requests made between the years 2010 and 2017, the Respondent did not provide the requisite infrastructure or grant the necessary approvals for implementation of the project.
- 5.** The Respondent issued a letter dated 20.09.2023 purporting to revoke the Sub-Lease Agreement on the grounds that no construction had been undertaken and that the Petitioner had mortgaged the sub-leased property, resulting in proceedings under the SARFAESI Act.
- 6.** The Petitioner disputes the said allegations and contends that the mortgage had been created after obtaining a No Objection Certificate from the Respondent. By its letter dated 16.10.2023, the Petitioner disputed the revocation and asserted that the Respondent had no authority to terminate the Sub-Lease Agreement, particularly when the Respondent had allegedly failed to discharge its reciprocal contractual obligations.
- 7.** The Agreement dated 04.07.2008 contains an arbitration clause providing for resolution of disputes through arbitration under the Arbitration and Conciliation Act, 1996. According to the Petitioner, despite the existence of the arbitration agreement, the Respondent initiated proceedings under

Section 3(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 before the First Land Acquisition Collector, Kolkata. The Petitioner entered appearance in the said proceedings and raised an objection to the jurisdiction of the authority on the ground that the disputes were required to be resolved through arbitration.

- 8.** The Petitioner thereafter issued a notice dated 08.11.2023 invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, in terms of Clause 5 of the Sub-Lease Agreement dated 04.07.2008, which provides as follows:

"5. The parties shall make every endeavour to settle any dispute, controversy or claim arising between the parties in connection with this sub-lease amicably in Spirit of good faith. In the event of failure to do so such dispute, controversy or claim shall be finally resolved in terms of the India Arbitration and Conciliation Act, 1996 as amended from time to time within the jurisdiction of Kolkata High Court."

- 9.** By the said notice, the Petitioner proposed the appointment of a former Judge of this Court as the Sole Arbitrator. The Respondent, by its reply dated 09.12.2023, disputed the invocation of arbitration and took the stand that no arbitrable dispute existed between the parties.
- 10.** The Petitioner also instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 challenging the revocation of the Sub-Lease Agreement and seeking interim protection and the same is pending.
- 11.** According to the Petitioner, disputes have arisen between the parties concerning the alleged breach of reciprocal obligations under the Sub-Lease Agreement, the validity of the revocation of the Sub-Lease and the consequential rights and liabilities of the parties thereunder. Since the parties have failed to arrive at a consensus regarding the appointment of

an Arbitrator, the present petition has been filed seeking appointment of an Arbitrator by this Court.

Submission on behalf of the Petitioner

- 12.** Mr. Sakya Sen, Learned Senior Counsel for the Petitioner submits that Clause 5 of the Sub-Lease Agreement dated 04.07.2008 constitutes a valid, subsisting arbitration agreement, and that this Court's examination under Section 11 of the Act is confined to a *prima facie* examination of the existence of such arbitration agreement and nothing more. The Respondent's stand that "no arbitrable dispute exists" is untenable, since the dispute, i.e, the Respondent's failure to provide power, water and sewerage under Clause 'h' of the Second Schedule, and the consequent illegality of the termination notice dated 20.09.2023, and the damages caused to the Petitioner arises directly out of the Agreement and falls within the scope of Clause 5.
- 13.** Mr. Sen, learned Senior Counsel appearing for the Petitioner, submits that the disputes sought to be referred to arbitration are not confined to the challenge against the determination of the Sub-Lease Agreement, but also include substantial claims for damages arising out of the Respondent's alleged breaches. It is submitted that the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 operate only after a person has become an "unauthorised occupant". According to the Petitioner, whether the Petitioner has assumed such status necessarily depends upon the validity and legality of the Respondent's determination of the Sub-Lease Agreement. It is contended that the authority constituted under the 1962 Act is not vested with jurisdiction to adjudicate upon the legality or validity of the determination of the Sub-Lease Agreement, and

consequently, such disputes, together with the Petitioner's claims for damages, are matters falling within the scope of the arbitration agreement and are amenable to arbitration.

14. Learned Senior Counsel, Mr. Sen draws attention of this Court to the Judgment of Hon'ble Supreme Court in **Central Warehousing Corporation & Anr. v. Sidhartha Tiles & Sanitary (P) Ltd.**, reported in **2024 SCC OnLine SC 2983**, holding that a special eviction statute for public premises does not oust arbitration of disputes arising from the underlying contract, and that Section 11(6-A) scrutiny is limited to *prima facie* existence of the arbitration agreement.
15. This is reinforced by the coordinate bench of this Court in **Asia Health Care Development Pvt. Ltd. v. Murshidabad Zilla Parishad, AP-COM/733/2025 (9 December 2025)**, arising from materially identical facts, a public land lease with an arbitration clause, and parallel proceedings under the very same West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Following FMA 816 of 2025 and **Central Warehousing Corporation** (supra), this Court held there was "no impediment in referring the dispute to arbitration" merely because eviction proceedings were pending under the 1962 Act, and appointed a Sole Arbitrator, leaving non-arbitrability of specific claims to be raised before the Arbitrator.
16. Learned Senior Counsel further relied upon **Office for Alternative Architecture v. Ircon Infrastructure & Services Ltd.**, reported in **2025 SCC OnLine SC 1098**, to substantiate that a referral court must not bisect claims into arbitrable/non-arbitrable portions once an arbitration

agreement is found to exist; the entire dispute must be referred, leaving questions of arbitrability to be decided by the Tribunal.

- 17.** Accordingly, learned Senior Counsel concludes that the pendency of proceedings under the 1962 Act before the First Land Acquisition Collector is no bar to reference to arbitration. Hence, it is prayed that a Sole Arbitrator be appointed under Section 11 of the Arbitration and Conciliation Act, 1996, to adjudicate all disputes arising out of the Sub-Lease Agreement dated 04.07.2008, leaving any question of non-arbitrability to be raised before the learned Arbitrator.

Submission on behalf of the Respondents

- 18.** Mr. Suman Kr. Dutt, learned Senior Counsel for the Respondent, submits that the Respondent is the lessee of 10.052 acres of land at Nonandanga under a lease granted by KMDA for a period of 99 years, and had, in furtherance of its objective of promoting the IT sector, executed a registered Sub-Lease Agreement dated 04.07.2008 in favour of the Petitioner. Under the terms of the Sub-Lease Agreement, the Petitioner was required to develop the project within the stipulated period and was permitted to mortgage its leasehold interest only with the Respondent's prior written consent, and solely for the purpose of financing the project. It is submitted that despite repeated opportunities and reminders, the Petitioner failed to undertake any development on the land. The Respondent further alleges that the Petitioner relied upon a fabricated version of the NOC dated 04.04.2018 and wrongfully mortgaged its leasehold interest to secure borrowings of its group company for purposes wholly outside the scope of the Sub-Lease Agreement, a matter presently under CID investigation.

- 19.** Mr. Dutt further submits that upon learning of the SARFAESI proceedings initiated by the lending bank, the Respondent terminated the Sub-Lease Agreement by notices dated 20.09.2023 and 04.10.2023, and thereafter initiated eviction proceedings under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 before the competent statutory authority, which proceedings remain pending. The Respondent contends that the Petitioner invoked arbitration only after commencement of the statutory proceedings. It is also submitted that although the Petitioner had obtained interim relief in proceedings under Section 9 of the Act, the said order was subsequently set aside by the Hon'ble Division Bench in appeal.
- 20.** Learned Counsel submits that the present petition under Section 11 is not maintainable, being barred by waiver, acquiescence and estoppel, and is liable to be dismissed with costs. It is contended that the disputes sought to be referred do not arise out of contractual obligations simpliciter, but relate to the Petitioner's continued occupation of public land and the validity of its eviction therefrom, matters falling exclusively within the jurisdiction of the statutory authority under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.
- 21.** Placing reliance on the decision of the Hon'ble Supreme Court in ***Vidya Drolia & Ors. v. Durga Trading Corporation***, reported in ***(2021) 2 SCC 1***, learned Counsel submits that the disputes are non-arbitrable, as they concern public land, affect public rights, and are governed by a special statute conferring exclusive jurisdiction upon the Land Acquisition Collector.
- 22.** It is the submission of learned Counsel for the Respondent that the issue of revocation of the Sub-Lease Agreement is not arbitrable at all, and that

only the Petitioner's claim for damages, if any, is capable of being referred to arbitration. Learned Counsel emphasises the principle of severability, submitting that the Petitioner's claims ought to be bifurcated into arbitrable and non-arbitrable heads, and that this Court, while exercising jurisdiction under Section 11, ought to refer only the arbitrable portion, namely, the claim for damages, while declining reference of the issue of revocation, which is exclusively triable by the statutory authority under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Learned Counsel further submits that the proceedings are pending before the DRT involving the bank, which are directly connected to the revocation of the Sub-Lease Agreement, and are, for the same reason, not arbitrable.

- 23.** It is further submitted that the issue of arbitrability has already been considered by the Hon'ble Division Bench, and judicial propriety warrants that no reference to arbitration be made. Accordingly, the Respondent prays for dismissal of the present petition.

Legal Analysis

- 24.** This Court has heard the submissions advanced by the learned counsel for the parties and perused the records.
- 25.** The core issue involved in the present matter is whether the disputes between the parties arising out of the Sub-Lease Agreement dated 04.07.2008, including the validity of the revocation of the said Agreement, the Petitioner's claim for damages, and the effect of the pending proceedings under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and before the DRT, are liable to be referred to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996,

or whether such reference is barred, in whole or in part, on grounds of non-arbitrability, waiver, acquiescence, estoppel, and the pendency of proceedings before statutory forums.

- 26.** Before examining the facts of the present case, it is necessary to briefly examine the scope of this Court's jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, as it stands after the insertion of sub-section (6-A) and its subsequent judicial interpretation. It is well settled that upon the introduction of Section 11(6-A), the scope of enquiry before a referral court is confined to the examination of the existence of an arbitration agreement, and nothing beyond. In ***Vidya Drolia*** (*supra*), the Hon'ble Supreme Court held that the expression "existence of an arbitration agreement" necessarily takes within its fold the question of validity, and evolved the fourfold test of non-arbitrability, while simultaneously holding that at the referral stage, the court is to apply only a *prima facie* standard, and must decline reference only where the claim is "manifestly and ex facie non-arbitrable." This principle was substantially reinforced and clarified by the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, reported in **(2024) 10 SCC 168**, wherein it was authoritatively held that the referral court, while exercising jurisdiction under Section 11(6-A), is not to embark upon a detailed or mini-trial of contested facts touching upon the validity or arbitrability of the dispute, and that such issues, save in cases of manifest and ex facie non-arbitrability, must be left for determination by the Arbitral Tribunal, in keeping with the doctrine of *kompetenz-kompetenz* under Section 16 of the Act. The judgment in ***Krish Spinning*** (*supra*) further clarifies that any residual doubt as to the existence, validity, or scope of the arbitration

agreement, or the arbitrability of the dispute, ought to be resolved in favour of reference, leaving the parties to canvass their respective contentions before the Arbitrator.

- 27.** This position has been consistently applied even in the context of disputes touching upon public premises and special eviction statutes. In ***Central Warehousing Corporation & Anr. v. Sidhartha Tiles & Sanitary (P) Ltd.***, reported as **2024 SCC OnLine SC 2983**, the Hon'ble Supreme Court held that the existence of a special statute providing for eviction of unauthorised occupants of public premises does not, by itself, oust the jurisdiction of the Arbitral Tribunal to adjudicate disputes arising out of the underlying contract, and reaffirmed that the scrutiny under Section 11(6-A) is confined to the *prima facie* existence of the arbitration agreement. This principle was applied by a coordinate Bench of this Court in ***Asia Health Care Development Pvt. Ltd. (Supra)***, on facts materially similar to the present case, where this Court held that the mere pendency of proceedings under the very same West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 constituted "no impediment" to reference, and appointed a Sole Arbitrator, leaving the question of non-arbitrability of specific claims open to be raised before the Arbitrator. Further, in *Office for Alternative Architecture (supra)*, the Hon'ble Supreme Court held that a referral court, once satisfied of the existence of an arbitration agreement, must not itself undertake the exercise of bifurcating or bisecting the claims into arbitrable and non-arbitrable portions; the entirety of the dispute is to be referred, and objections as to arbitrability of specific claims are to be raised before, and adjudicated by, the Arbitral Tribunal.

- 28.** Applying the aforesaid principles to the facts of the present case, it is noticed at the outset that the existence of Clause 5 of the Sub-Lease Agreement dated 04.07.2008, which constitutes a valid arbitration agreement between the parties, is not seriously disputed by the Respondent. The Respondent's principal objection, as recorded in its reply dated 09.12.2023 and reiterated before this Court, is not that no arbitration agreement exists but that "no arbitrable dispute exists". The objection, in substance, goes not to the existence of the arbitration agreement but to the arbitrability of the disputes sought to be referred. In light of the law laid down in **Krish Spinning** (supra), such an objection, unless it renders the dispute manifestly and *ex facie* non-arbitrable, is not one that this Court can adjudicate at the Section 11 stage; it is a matter to be left to the Arbitral Tribunal.
- 29.** The Respondent's contention that the disputes fall exclusively within the jurisdiction of the authority constituted under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 does not, in the considered view of this Court, render the dispute manifestly non-arbitrable. As rightly submitted by the Petitioner, the 1962 Act operates only once a person has attained the status of an "unauthorised occupant," and the question of whether the Petitioner has, in fact, assumed such status is itself dependent upon the antecedent question of the validity and legality of the Respondent's revocation of the Sub-Lease Agreement, a question arising directly out of, and governed by, the terms of the Agreement, including Clause 5 thereof. Whether the statutory authority under the 1962 Act is or is not competent to examine such validity, and whether the pendency of those proceedings has any bearing on the arbitral proceedings,

are matters that, in terms of **Central Warehousing Corporation** (supra) and **Asia Health Care Development** (supra), do not constitute an impediment to reference under Section 11, and are appropriately left open for determination by the learned Arbitrator.

- 30.** Insofar as the Respondent's submission on severability is concerned, namely, that the issue of revocation of the Sub-Lease Agreement is not arbitrable at all, while the claim for damages alone is capable of being referred, this Court is unable to accept the invitation to bifurcate the claims at this stage. Such an exercise, as held in **Office for Alternative Architecture** (supra), falls outside the limited scope of enquiry available to a referral court under Section 11(6-A), and is a matter to be urged by the Respondent before the Arbitral Tribunal. Similarly, the submission that the proceedings pending before the Debts Recovery Tribunal render the dispute relating to the revocation of the Sub-Lease Agreement, non-arbitrable stands on the same footing, and is left open to be raised before the learned Arbitrator, who alone is competent to examine the interplay, if any, between the DRT proceedings and the disputes referred to arbitration.
- 31.** The Respondent's objection founded on waiver, acquiescence and estoppel, as also the contention that the setting aside of the interim order passed under Section 9 of the Act by the Hon'ble Division Bench operates as a bar to the present petition, are, in the view of this Court, matters that do not touch upon the existence of the arbitration agreement, but relate to the conduct of the parties and the merits of the respective claims. These are mixed questions of fact and law, and in keeping with the principle that any doubt as to arbitrability is to be resolved in favour of reference, are similarly left open to be agitated before the learned Arbitrator.

- 32.** Insofar as the observations of the Hon'ble Division Bench while dealing with the Section 9 proceedings are concerned, it is noted that the scope of enquiry in proceedings under Section 9 is distinct from that under Section 11, and observations made therein, being in the context of interim protection, cannot be read as a final determination on the question of arbitrability so as to bind this Court at the reference stage.
- 33.** In view of the above, this Court is satisfied that a valid and subsisting arbitration agreement exists between the parties in terms of Clause 5 of the Sub-Lease Agreement dated 04.07.2008, and that the disputes sought to be referred have not been shown to be manifestly and *ex facie* non-arbitrable so as to warrant refusal of reference at this stage. All contentions raised by the Respondent, including as to non-arbitrability, severability of claims, waiver, acquiescence, estoppel, and the effect of the proceedings under the 1962 Act and before the DRT, are left open to be urged before the learned Arbitrator, who shall be at liberty to decide the same in accordance with law.
- 34.** Accordingly, AP-COM-33-2024 is allowed, and Mr. Justice Jyotirmay Bhattacharya (Retd.), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising out of the Sub-Lease Agreement dated 04.07.2008.
- 35.** The learned Sole Arbitrator shall enter upon the reference making the disclosure with Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.
- 36.** The learned Sole Arbitrator shall fix his remuneration in terms of the Fourth Schedule of the Act or as agreed between the parties.

- 37.** 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 arbitrator, who shall decide the same in accordance with law.

(GAURANG KANTH, J.)

SAKIL AMED (P.A.)

