

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.P. No.03/2023

Sri Niroj Kanti Dhar

----Petitioner(s)

Versus

The State of Tripura and another

-----Respondent(s)

For Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

27/03/2023

Heard Mr. G.K. Nama, learned counsel appearing for the petitioner as well as Mr. K. De, learned Addl. Government Advocate appearing for the respondents.

This is an application filed by the petitioner under Section 11(3A) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for resolving purported dispute which had arisen between the parties in terms of Arbitration Clause No.22 contained in Contract Agreement No.35/CE/EE/KD/2016-17 dated 30.01.2017.

The arbitration clause 22 is reproduced hereinbelow:

“22. *Settlement of disputes:*

22.1 If any dispute or difference of any kind whatsoever arises between the department and the Contractor

in connection with, or arising out of the Contract at stage, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall in the first place, be referred to and settled by the Engineer-in-charge who shall, within a period of twenty days after being requested by the Contractor to do so give written notice of his decision to the Contractor. Upon receipt of the written notice of the decision of the Engineer-in-Charge the Contractor shall promptly proceed without delay to comply with such notice of decision.

22.2 If the Engineer-in-Charge fails to give notice of his decision in writing a period of twenty days after being requested or if the Contractor is dissatisfied with the notice of the decision of the Engineer-in-Charge, the Contractor may within fifteen days after receiving the notice of decision appeal to the concerned Superintending Engineer of Department who shall after affording opportunity of being heard shall give notice of his decision within a period of thirty days. After Superintending Engineer has given written notice of his decision to the Contractor and no claim to arbitration, has been communicated to him by the Contractor within a period of fifteen days from receipt of such notice the said decision shall remain final and binding on both side. If the Superintending Engineer fails to give notice of his decision, as aforesaid within a period of thirty days after being requested as aforesaid, or if the Contractor be dissatisfied with any such decision, then and in any such case the contractor within thirty days after the expiration of the first named period of thirty

days as the case may be, require that the matter or matters in dispute be referred to arbitration as detailed below:-

SETTLEMENT OF CLAIMS:

All disputes or difference arising of or relating to the Contract shall be referred for the adjudication as follows:

- a) Claims up to a value of Rupees 50,000/-
-Superintending Engineer of another circle in the same department.
- b) Claims above Rs.50,000/-
-Another Chief Engineer or Arbitrator appointed by the Chief Engineer of the same department.

The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification thereof.

The arbitrator shall state his reasons in passing the award.

A reference for adjudication under this clauses shall be made by the contractor within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment whichever is earlier. Only contracts executed in Tripura shall have jurisdiction for any suit arising out of this contract. More particularly no suit shall be instituted or entertained in any court outside the state arising out of contract.”

Accordingly, considering the arbitration clause and as mutually agreed to by learned counsel for both parties, Shri Subhash Sikdar, a retired District Judge is hereby appointed to act as a sole Arbitrator to resolve the disputes between the parties. Parties are at liberty to raise all such

contentions before the learned Arbitrator. Nothing stated in this order shall prejudice either side in raising their claims and/or counter claims before the learned Arbitrator.

Within a period of two weeks from today, the parties shall obtain a declaration from the arbitrator appointed, in terms of Section 12(1)(b) of the Arbitration and Conciliation Act, 1996 and file it before the Registry of this Court.

Arbitration petition is allowed and disposed of accordingly.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

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