Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 106 of 2023

Applicant :- M/S Naresh Kumar Bansal
Opposite Party :- U P State Industrial Development Corporation Limited
Counsel for Applicant :- Abhinay Bhattacharya
Counsel for Opposite Party :- Praveen Kumar Giri

Hon'ble Ashwani Kumar Mishra,J.

Heard Sri Rudraksh Gupta and Sri Abhinav Bhattacharya, learned counsels for the applicant and Sri P. K. Giri, learned counsel for the opposite party.

This application has been filed by the applicant under section 11 of the Arbitration and Conciliation Act, 1996 with the prayer to refer the dispute arisen between the parties to arbitrator.

According to the applicant, an agreement between it (applicant) and the Chief Engineer, U.P. State Industrial Development Corporation Limited (UPSIDC) has been signed, which is contained in Annexure-5 to the petition. Clause 63(c) of the agreement contemplates that any dispute arising between the parties would be referred to sole arbitrator or person appointed by Managing Director of the opposite party i.e. UPSIDC. Arbitration clause has been invoked by the applicant vide notice dated 17.05.2023, which is followed with a reminder. Despite such communication sent, no arbitrator has been appointed, nor any reply is sent.

This petition is accordingly entertained and notices were issued to the opposite party. Sri P. K. Giri, Advocate has entered appearance on behalf of the opposite party and has filed counter affidavit wherein there is no denial of the existence of arbitration clause in the agreement between the parties nor there is any denial of the fact that such arbitration clause has been invoked by the applicant. What is stated by the opposite party is that applicant has not performed the work as was expected of it and that the claim of the applicant is not valid.

Issues with regard to claim of the parties on merits are not required

to be commented upon by this Court, inasmuch as all such issues would require determination at the level of the concerned arbitrator, at the first instance.

Since existence of arbitration clause in the agreement between the parties as well as its invocation remains undisputed as such necessary ingredients to invoke jurisdiction of this Court under Section 11 of the Act is shown to exist. Consequently, this application succeeds and is allowed.

Accordingly, Mr. Justice S. Ravindra Bhat (Former Judge of the Hon'ble Supreme Court), C-49, Mayfair Gardens, New Delhi, Pin Code 110016, Mob. No.9818000160 is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(8) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

Order Date :- 26.10.2023
Ashok Kr.

Digitally signed by :-
ASHOK KUMAR
High Court of Judicature at Allahabad