

ORDER SHEET
AP 629/2018
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SUNAINA RANI SHARMA
Versus
GENERAL MANAGER, EASTERN RAILWAY

BEFORE:
The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 29th January, 2019

Appearance :
Mr.Arik Banerjee,
Mr.Saptarshi Bhattacharya,
Advs., for the petitioner.

The Court : In this application under Section 11(6) of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016 (in short, 'the Act of 1996') the petitioner has prayed for appointment of a sole arbitrator to adjudicate the disputes between the parties relating to the said agreement dated December 11, 2012 (hereinafter referred to as the 'said agreement'). As per the said agreement entered into between the parties, the petitioner was obliged to carry out repair/overhauling of HYT MAKE UNDERFLOOR WHEEL LATHE MODEL NO. NGUFL21 AT EMU CAR SHED, HOWRAH (hereinafter referred to as the 'said work').

Admittedly, the terms and conditions under which the petitioner was required to carry out the said work for the respondent railway was those mentioned in the said agreement, as well as the terms contained in the

Indian Railways Standard General Conditions of Contract, July 2017 (hereinafter referred to as the 'GCC').

Clause 63 of the GCC stipulates that any claim or dispute raised by the petitioner relating to the said agreement would be first referred to the respondent railway for their decision. As per clause 64(1)(i) of the GCC, in the event of any failure on the part of the respondent railway to render its decision on the disputes/claims raised by the petitioner under clause 63 within a period of 120 days, the petitioner contractor would be entitled to refer its claims/disputes to arbitration. Clause 64(3)(a)(i) of the GCC provides that in cases where the value of all the claims of the contractor does not exceed Rs.35 lacs, the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a gazetted officer of the railway not below JA-Grade, nominated by the General Manager.

According to the petitioner, the various defaults committed by the respondent railway to perform their obligations under the said agreement have given rise to its various claims. Accordingly, in terms of clause 63 of the GCC by a letter dated May 30, 2017, the petitioner requested the General Manager of the respondent railway to render his decision on the claim of the petitioner for Rs.21,29,253/-. In spite of receipt of the said letter dated May 30, 2017, the respondent railway did not render any decision on the claims of the petitioner within the period stipulated under clause 64(1)(i) of the GCC. Thus, by a letter dated November 13, 2017 the petitioner requested the General Manager to appoint an arbitrator for adjudicating its claim which is below Rs.25 lacs.

In this application the petitioner has disclosed the receipt issued by the postal authority evidencing receipt of the said letter dated November 13, 2017 by the General Manager of the respondent railway. In spite of receipt of the letter dated November 13, 2017, the respondent railway has not appointed any Arbitrator within the period of 30 days, as stipulated under Section 11 of the Act of 1996 and, as such, the petitioner has filed this application seeking for the relief already mentioned above.

On September 19, 2018 when this application was taken up for hearing, the learned Advocate appearing for the respondent railway raised objection to the maintainability of this application on the ground that the letters dated May 30, 2017 and November 13, 2017 were addressed by the petitioner to the respondent at 14, Strand Road, BBD Bagh, Kolkata - 700 001 which is not the address of the office of the General Manager of the Eastern Railway. An opportunity was granted to the respondent railway to file an affidavit to the respondent to substantiate that the General Manager of the Eastern Railway does not have any office at 14, Strand Road, BBD Bagh, Kolkata - 700 001. However, in the affidavit-in-opposition filed by the respondent railway nothing has been disclosed that the office of the General Manager of the Eastern Railway has its office at any place other than 14, Strand Road, BBD Bagh, Kolkata - 700 001. The petitioner in its affidavit-in-reply has disclosed a document downloaded from the website of the Eastern Railway showing address of its General Manager is at 14, Strand Road, BBD Bagh, Kolkata - 700 001.

In the present case, the existence of the arbitration agreement contained in clause 64.1 and the mode of appointment of an arbitrator as contemplated under Section 64(3)(a)(i) of the GCC is not in dispute. Accordingly, in view of the provisions contained in sub-section (6A) of Section 11 of the Act of 1996 and the decision of the Supreme Court in the case of ***Duro Felguera S.A. Vs. Gangavaram Port Ltd.***, reported in ***(2017) 9 SCC 729***, the present application of the petitioner succeeds.

Accordingly, Mr. Partha Pratim Roy, Advocate of Bar Association (Room no.11), is appointed as the sole Arbitrator to adjudicate all the claims of the petitioner against the respondent relating to the said agreement.

The learned Arbitrator shall be free to fix his fees in terms of the Fourth Schedule of the Act of 1996 and to engage secretarial staff to conduct the arbitral proceeding. The fees of the learned Arbitrator and the remuneration of the secretarial staff shall be borne by the parties in equal share.

With the above directions, the application, AP No.629 of 2018 stands disposed of, without any order as to costs.

(ASHIS KUMAR CHAKRABORTY, J.)

