

AP No.44 of 2020
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SMT. RANJANA BHATTACHARJEE
VERSUS
ORIENTAL EPC PRIVATE LIMITED

BEFORE

The Hon'ble Justice ASHIS KUMAR CHAKRABORTY

Date: 21st December, 2020

Apperance

*Mr. Sankarsan Sarkar, Adv. with
Mr. Avijit Dey, Adv.
..for the petitioner
Ms. Suchismita Chatterjee, Adv. with
Mr. Malay Kumar Seal, Adv.
..for the respondent*

The Court: The petitioner has filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, "the Act of 1996") praying for appointment of a sole Arbitrator to adjudicate the disputes arisen between the parties relating to the nine (9) work orders issued by the respondent in her favour. The particulars of the said work orders dated between September 1, 2014 and June 18, 2015 are mentioned in paragraph 5 of the supplementary affidavit filed by the petitioner today. The said work orders were issued to the petitioner to carry out the erection, alignment and commissioning work of turbine and generator for top pressure recovery turbine at the IISCO Steel Plant, Burnpur. The terms and conditions of all the said nine work orders were those contained in the General Terms and Conditions stipulated by the respondent for erection, alignment and commissioning work of turbine and generator at IISCO Steel Plant, Burnpur. Clause 46.1 of the said General Terms contemplates that all the disputes arising between the parties to contract if not mutually settled, shall be settled by a third

party Arbitrator appointed by the respondent herein and the venue of the arbitration shall be in Kolkata.

According to the petitioner, the respondent has failed and refused to pay her various dues under the nine work orders giving rise to the disputes and differences between the parties, which could not be settled by mutual agreement. Thus, by a notice dated June 26, 2019, the petitioner requested the respondent to agree to the appointment of the Arbitrator named by her. The respondent, however, refused to agree to the appointment of the Arbitrator as named by the petitioner not did it appoint an Arbitrator to adjudicate the disputes arising between the parties relating to the said nine work orders. Learned Counsel appearing for the petitioner relied on the decision in the case of *Duro Felguera S.A. vs. Gangavaram Port Limited* reported in (2017) 9 SCC 729.

It is submitted by the respondent that the alleged claims of the petitioner are all hopelessly barred by limitation. The respondent is, however, ready to have the disputes between the parties relating to all the nine work orders referred to an Arbitrator subject to the condition that it is entitled to raise the point of maintainability of the claims of the petitioner on the ground of limitation before the Arbitrator. In support of such contention, the learned Counsel for the respondent referred to the decision of the Supreme Court in the case of *Uttarkhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Field Limited* reported in (2020) 2 SCC 455.

In reply, the learned Advocate appearing for the petitioner submits that no part of the claim of the petitioner against the respondent is barred by limitation.

Considering the facts of the case as discussed above, when the parties agree that the said nine work orders were issued by the respondent towards execution of the complete project, comprising erection, alignment and commissioning work of turbine and generator for top pressure recovery turbine at the IISCO Steel Plant, Burnpur and the

parties have failed to appoint the Arbitrator, the petitioner's prayer for appointment of a sole Arbitrator is allowed.

Justice Tapan Kumar Dutt, a former Judge of this Court, residing at 1/3, Deshpran Sasmal Road, Howrah-711101 (Mob:- 9831066037) is appointed as a sole Arbitrator to adjudicate the disputes arisen between the parties relating to the nine work orders dated between September 1, 2014 and June 18, 2015, particulars whereof are mentioned in paragraph 5 of the supplementary affidavit filed by the petitioner. The Arbitrator shall be free to fix his fees as per the 4th Schedule of the Act of 1996, which shall be borne the parties in equal shares. The Arbitrator will further be entitled to appoint his secretarial staff whose remuneration shall also be shared by the parties equally.

From the documents disclosed in the application, it is not possible to come to a conclusion that any of the claims of the petitioner is barred by limitation and such issue is to be decided by the Arbitrator. The respondent will be entitled to raise all the defence against the alleged claims of the petitioner including the point of limitation before the Arbitrator.

With the above directions, AP No.44 of 2020 stand disposed of.

There will be no order as to costs.

(ASHIS KUMAR CHAKRABORTY, J.)