

ORDER SHEET
AP/254/2020
IA No: GA 1/2020
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

S2 SIGNPOST INDIA PRIVATE LIMITED
VERSUS
AIRPORT AUTHORITY OF INDIA

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 25th September, 2020.

Appearance:
Mr. Soumabho Ghosh, Adv.
Mr. Rishov Dutt, Adv.
Mr. Shounak Mitra, Adv.

Mr. Ratnanko Banerjee Sr. Adv.
Mr. Sakabda Roy, Adv.

The Court: Learned Senior Counsel appearing in support of this application under Section 11 of the Arbitration and Conciliation Act, 1996 submits that since the procedure as enumerated in the arbitration clause of the concession agreement-in-question between the parties did not meet with success, an Arbitrator may be appointed by this Court.

Learned Counsel appearing for the respondent relies upon Clause 5.16.1 of Chapter V, pertaining to concession and the concessionaire and argues the proposition that the said provision envisages prior reference to a dispute

resolution committee set up by the respondent authority and thereafter a request for arbitration has to be, which remedies were not exhausted by the petitioner before approaching this court under Section 11 of the 1996 Act.

Learned Counsel further argues that the said provision is mandatory and relies upon a Coordinate Bench Judgement of this Court, reported at 2016 SCC OnLine Calcutta 6460 in the context. In reply, learned Senior Counsel appearing for the petitioner sites a judgment of the Supreme Court, reported at (2015)13 SCC page 610, where a similar clause was held to be optional.

Be that as it may, it is evident from the claim, made by the petitioner and served on the respondent, dated May 29, 2019 (Annexure D at page 265 of the application) that the details of the dispute under reference were already disclosed by the petitioner and was within full knowledge of the respondent.

A further communication from the petitioner to the respondent authority, also annexed to the application, shows that the petitioner duly sought a reference to the Dispute Resolution Committee as far back as on November 21, 2019.

Thereafter, on such request having not been complied with by the respondent, a further letter dated August 6, 2020, seeking reference to arbitration, was also sent by the petitioner and was received by the respondent authority. A copy of the same is annexed at page 304 of the present application.

In view of the materials on record specifically indicating towards due compliance of Clause 5.16.1, as relied on by the respondent, there is no impediment in appointing an Arbitrator in the matter.

Accordingly, AP 254 of 2020 is disposed of by appointing Hon'ble Justice Asok Kumar Ganguly (since retired from the Supreme Court) as an Arbitrator to

resolve the dispute raised by the petitioner against the respondent Airport Authority of India, as reflected in the present application. The remuneration of the arbitral tribunal and necessary expenses is left for the tribunal itself to decide, at its first sitting if possible. Needless to say, the arbitration proceeding shall be governed by the modalities and procedure as enumerated in the Arbitration and Conciliation Act, 1996 (as amended till date and subject to further amendments, if any, in the meantime). The parties shall communicate this order, as well as serve a copy of the application under Section 11 of the 1996 Act, along with annexures, to the Arbitrator at the earliest, latest within three weeks from date, to ensure the early disposal of the reference. There will be no order as to costs. It is further made clear that it will be open for the Arbitrator to decide all the relevant disputes raised by the parties connected with, or ancillary to, the disputes raised in the reference.

The present application under Section 11 shall not be treated to be the arbitral reference but the claimant shall submit before the Arbitrator a proper, detailed reference/claim petition detailing all the disputes, on which the parties seek resolution, at the earliest.

(SABYASACHI BHATTACHARYYA, J.)