

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP No. 391 of 2020

TECH-FAST REBUILD PRIVATE LIMITED
VERSUS
BALDEO SINGH

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 22nd December, 2020.

Appearance:

Mr. Suman Dutt, Adv.

Mr. Soumabho Ghose, Adv.

Ms. Rusha Mitra, Adv.

Mr. Soumalya Ganguli, Adv.

Mr. Nilanjan Bhattacharya, Adv.

Mr. N.K. Chowdhury, Adv.

Mr. Prabir Bera, Adv.

The Court : In this application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (in short, "the Act of 1996") the petitioner has prayed for appointment of a sole Arbitrator to adjudicate the disputes arisen between the parties to the Joint Venture Agreement dated March 21, 2017 (hereinafter referred to as the "Joint Venture Agreement").

There is no dispute that the parties had entered into the Joint Venture Agreement to submit a tender in terms of a notice inviting tender issued by the General Manager, Farakka Barrage Project for renovation/special repair and improvement of the P.S.C. bridge road over Farakka Barrage. The Joint Venture submitted the tender to the General Manager, Farakka Barrage

Project and the same was accepted by the competent authority of the Farakka Barrage Project.

Clause 13 of the Joint Venture Agreement contemplates that all disputes and differences arising between the parties relating to the said Agreement shall be adjudicated by a sole Arbitrator to be appointed with the mutual consent of the parties.

It is alleged that during execution of the aforementioned project the respondent has withheld various payments from the petitioner, as a result thereof disputes and differences have arisen between the parties relating to the Joint Venture Agreement which are required to be adjudicated through arbitration.

Although, it is the contention of the respondent that he has paid all the dues of the petitioner but from the communication dated June 18, 2020 issued by the respondent to the petitioner, it is evident that it is the respondent himself who called upon the petitioner to invoke the relevant provision of the Joint Venture Agreement to redress their grievance.

By the letter dated July 3, 2020 the petitioner recommended the name of an advocate practising in this Court to be appointed as the sole Arbitrator to adjudicate the disputes arisen between the parties. However, by a letter dated July 15, 2020 the respondent suggested the name of another advocate practising in this Court for appointment as the sole Arbitrator.

In the present case, there is no dispute between the parties with regard to the existence of the aforementioned arbitration agreement contained in Clause 13 of the Joint Venture Agreement. When the respondent suggested the name of an advocate to be

appointed as the sole Arbitrator, it implies that he has accepted the existence of the disputes and differences between the parties relating to the Joint Venture Agreement.

Considering the communications dated July 3, 2020 and July 15, 2020 exchanged between the parties, it is evident that the parties have failed to agree to the appointment of a sole Arbitrator.

For the reasons aforesaid, the application, AP No.391 of 2020 filed by the petitioner succeeds.

Mr.Amitabha Ghosh, Advocate of Bar Library Club (First Floor) is appointed as the sole Arbitrator to adjudicate the disputes arisen between the parties relating to the Joint Venture Agreement.

The Arbitrator will be free to fix his fees in accordance with the Fourth Schedule to the Act of 1996 and the same shall be borne by the parties in equal shares. The Arbitrator will also be free to engage the secretarial staff whose remuneration shall also be borne by the parties in equal shares.

With the above directions, the application AP No.391 of 2020 stands disposed of. There shall, however, be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(ASHIS KUMAR CHAKRABORTY, J.)