

ODC-1

AP 40 of 2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

M/S MANGALAM EXPRESS CARGO PVT LTD
VERSUS
UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 8th February, 2021.

APPEARANCE:

Mr. Debrup Bhattacharjee, Adv.

Mr. Ritesh Kr. Ganguly, Adv.

Mr. Satyendra Agrawal, Adv.

The Court :- Affidavit of service filed in Court today be kept on record.

This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator for adjudication of the disputes that have arisen between the parties in relation to an agreement dated February 9, 2015 for leasing of space in brake vans/assistant guard cabins/parcel vans.

It appears that from time to time disputes arose between the parties and the petitioner approached this Court on several occasions in the writ jurisdiction. From time to time orders were passed. Finally, the petitioner issued a notice dated September 10, 2020 ostensibly under Section 21 of

the 1996 Act enumerating the disputes therein and calling upon the General Manager, South Eastern Railways, to appoint a sole arbitrator in terms of clause 30.2 of the aforesaid agreement within thirty days from the receipt of the notice. The addressee of such notice did not appoint the arbitrator nor did otherwise respond to the notice. Accordingly, the petitioner is before this Court with the present application.

The arbitration agreement is not in dispute. However, the respondent argues that the petitioner from time to time approached this Court with disputes relating to the subject contract. For the first time the petitioner did so was in 2015. After lapse of five years from that point of time, the present application is not maintainable. The respondent also argues that this Court does not have the jurisdiction to entertain this application. The respondent's learned Advocate relied on a decision of the Hon'ble Supreme Court in 1976 4 SCC 634 in the case of *The Kerala State Electricity Board, Trivandrum vs. T.P. Kunhaliumma*, in support of his submission that any petition filed beyond three years from the day of arising of cause of action is barred by limitation. As I read the case, the ratio of that case does not apply to the present proceedings. The cause of action for the present petitioner to file this application under Section 11 (6) of the 1996 Act arose upon the refusal of the General Manager, South Eastern Railways to appointment a sole arbitrator in terms of the arbitration clause. The

application has been filed well within three years of such refusal to appoint a sole arbitrator. Hence the application is not barred by limitation.

I am unable to accept the objections raised by the respondent. From time to time disputes may have been brought by the petitioner to this Court in its writ jurisdiction but it is nobody's case that all the disputes between the parties have been settled. Disputes obviously subsist between the parties as would also appear from the notice dated September 10, 2020 issued by the petitioner. When one party says that there are disputes, it would be futile for the other party to say that there is no dispute. The petitioner has claims against the respondent. Whether such claims have merit or not is a different question altogether which has to be decided before the arbitral tribunal. Existence of disputes between the parties hereto cannot be disputed.

The arbitration clause contemplated appointment of a sole arbitrator by the General Manager, South Eastern Railways. In spite of being called upon to do so by the petitioner, the said officer failed, neglected and refused to do so. Accordingly, going by the scheme of Section 11 of the 1996 Act, the petitioner has taken out the present application.

Since the existence of arbitration agreement is not disputed and there obviously are disputes between the parties, this application is allowed. Justice Ashim Kumar Banerjee (retired), a former Judge of this

Court is appointed as the sole Arbitrator for adjudicating the disputes between the parties relating to and/or arising out of the agreement dated February 9, 2015. Since there is no agreed place of holding the arbitral sittings, the arbitral tribunal may hold the sittings in Kolkata. The sole Arbitrator will be free to fix his fees and to engage the secretarial staff for conducting the proceedings. The fees of the arbitrator as well as the remuneration of the secretarial staff shall be borne by the parties in equal share.

With the above directions, AP No. 40 of 2021 is disposed of.

(ARIJIT BANERJEE, J.)