

OD – 8

AP/81/2020

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

MIPL-DRAIPL (JV)

-Versus-

EASTERN RAILWAY

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 4th February, 2021.

Appearance:

Mr. K. K. Pathak, Adv.

Mr. S. Majhi, Adv.

...for the petitioner.

Ms. Anita Kundu, Adv.

...for the respondent.

The Court : The affidavit of service filed in Court today be kept with the record.

The work of construction of a railway bridge over river Mayurakshi was awarded by the respondent to the petitioner. A memorandum of agreement dated September 5, 2013 was executed between the parties. Subsequently, the work order was cancelled by the respondent on the ground of alleged deficiencies on the part of the petitioner. This has naturally given rise to disputes between the parties.

The agreement between the parties contained an arbitration clause for resolution of disputes between the parties. This is not disputed. The petitioner gave notice of arbitration to the respondent. The respondent has

taken the stand that the arbitration proceedings have to be conducted by one of its empanelled arbitrators.

Learned advocate for the petitioner submits that all the empanelled arbitrators are ex-employees of the railways. Hence, unbiased adjudication cannot be expected from them. I am inclined to agree with him. In any event, Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule of the Act would appear to be a bar to any ex-employee of the respondent acting as arbitrator for adjudication of disputes between the petitioner and the respondent. In this connection, reference may be made to an order dated January 25, 2021, passed by a co-ordinate Bench in AP No.348 of 2019 (R. K. Associates & Hoteliers Private Limited versus Eastern Railway, through its Deputy Chief Commercial Manager) which has discussed recent Supreme Court decisions on this aspect.

In view of the aforesaid, the application succeeds. Hon'ble Justice Tapan Kumar Dutt (Retd.), a former Judge of this Court, is appointed as the sole Arbitrator to adjudicate the disputes between the parties relating to, arising out of or in connection with the agreement between the parties. The learned sole Arbitrator will be free to fix his remuneration and to engage secretarial staff. The fees of the learned Arbitrator as well as the remuneration of the secretarial staff shall be borne by the parties in equal measures.

AP No.81 of 2020 is, accordingly, disposed of without any order as to costs.

Since no affidavits have been invited, the allegations contained in the petition are deemed not to be admitted by the respondent.

(ARJIT BANERJEE, J.)

A/s.