

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

AP/86/2020

PAUL BUILDERS PVT. LTD AND ANR.

VERSUS

INDIAN STATISTICAL INSTITUTE AND ANR.

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 11th January, 2021.

Appearance:

Mr. Gautam Bramha, Adv.

Ms. Pampa Saha, Adv.

... for the petitioner.

Mr. Tarunjyoti Tewari, Adv.

... for the respondent.

The Court: In this application under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner has prayed for appointment of a sole Arbitrator to adjudicate the disputes arisen between the parties relating to the agreement dated May 16, 2013 (hereinafter referred to as "the said contract") entered into between the parties herein.

By the said contract the respondent inducted the petitioner as the contractor to carry out the development work of surrounding areas of Platinum Jubilee Building (JBS

Haldane Bhavan) at 202 Campus of ISI, Kolkata-700108. The terms and conditions under which the petitioner was required to carry out the contractual work were those submitted in the contract. Clause 8 of the said contract contemplated that all disputes arising between the parties shall be referred to the sole Arbitration of person or persons appointed by the Director, Indian Statistical Institute.

It is the case of the petitioner that since the respondent wrongfully reclaimed its various claims, disputes and differences have arisen between the parties which are required to be adjudicated through arbitration. Accordingly, by a letter dated June 9, 2017 the petitioner invoked the arbitration agreement and requested the respondent to refer the disputes to arbitration by considering provisions contained in Section 12(5), read with fifth and seventh schedule to the Act of 1996. The respondent, however, by their letter dated July 12, 2017 sought to refer certain disputes which had arisen between the parties relating to another contract for construction of the Platinum Jubilee Building(JBS Haldane Bhavan).

The petitioner by further letter dated July 16, 2018 addressed to the respondent for appointment of an Arbitrator to adjudicate the disputes between the parties

relating to the contract evoked no response from the respondents. Thus, the petitioner has filed this application praying for relief mentioned above. In view of the incorporation of the provisions of sub-Section (5) of Section 12 and the fifth and seventh schedule to the Act of 1996 and the decisions of the Supreme Court in the case of Voestalpine Schienen GmbH Vs. Delhi Metro Rail Corporation Limited reported in (2017)4 SCC 665 and TRF Limited Vs. Energo Engineering reported in (2017)8 SCC 377, the Director of the respondent cannot appoint an Arbitrator.

For the reasons aforesaid, the application succeeds.

Considering the materials on record and the arguments advanced by the learned Counsels for the respective parties, Justice Sahidullah Munshi, a former Judge of this Court is appointed as the sole Arbitrator to adjudicate all disputes and differences arisen between the parties relating to the contract, agreement dated May 16, 2013. The Arbitrator would be free to fix his fees as per the fourth Schedule to the Act of 1996, which shall be borne by the parties in equal shares. The Arbitrator shall also be entitled to engage the secretarial staff whose remuneration shall also be borne by the parties in equal shares.

With the above directions, the application, AP/86/2020 stands allowed.

There shall, however, be no order as to costs.

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

(ASHIS KUMAR CHAKRABORTY, J.)

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