

ORDER SHEET

AP 156 of 2021  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

PANCHDEEP CONSTRUCTIONS LTD  
VS  
NATIONAL PROJECT CONSTRUCTION  
CORPORATOIN LTD

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date: 25th March, 2021.

(Via Video Conference)

Mr. Nilanjan Bhattacharjee,

Mr. Saket Sharma, Advs.

...for the petitioner

Mr. Debajyoti Basu,

Ms. Reshmi Mukherjee, Advs.

...for the respondent

The Court: In this application under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an arbitrator.

The petitioner participated in a tender process of the respondent. The petitioner was awarded a contract on October 30, 2018. The contract contains an arbitration clause which is as follows :

“76.0 ARBITRATION : The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply under this clause.”

Disputes and differences arose between the parties. The petitioner invoked the arbitration agreement by a writing dated November 18, 2020.

Learned advocate appearing for the respondent contends that the writing dated November 18, 2020 cannot be construed to be a notice under Section 21 of the Act of 1996. He submits that the petitioner unilaterally named an arbitrator for an

appointment which is not permissible in terms of the arbitration agreement. There are other proceedings pending between the parties. According to him, the petitioner did not invoke the arbitration clause between the parties.

The existence of the arbitration agreement is not denied. The receipt of the letter dated November 18, 2020 is also not denied. By the letter dated November 18, 2020 the petitioner tabulates the disputes between the parties and seeks resolution of such disputes by the arbitrator named by the petitioner. It was open to the respondent to either accept such appointment or reject the same. The respondent although having replied to the notice dated November 18, 2020 chose not to accept the appointment. The respondent cannot be faulted for not accepting the nominee of the petitioner as the arbitrator. The exchange of correspondence from November 18, 2020 establishes that the petitioner invoked the arbitration agreement and called upon the respondent to refer the disputes to arbitration.

In the facts of the present case, therefore, there is a valid notice under Section 21 of the Act of 1996 seeking arbitration.

So far as pendency of other proceedings are concerned, such proceedings did not result into a conclusive finding on the merit of the disputes between the parties. The disputes between the parties remain outstanding for decision.

In such circumstances, Mr. Sagar Bandopadhyay, advocate is appointed as an arbitrator in terms of the arbitration agreement between the parties. Learned arbitrator is at liberty to fix his remuneration which is to be shared equally by the parties. The parties will bear the costs and expenses of the arbitration in equal share.

The parties are at liberty to inform the learned arbitrator of this order.

AP 156 of 2021 is disposed of accordingly.

(DEBANGSU BASAK, J.)

