

AP/177/2020
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL DIVISION
ORIGINAL SIDE

ACES INFOTECH (P) LTD.
VERSUS
KOLKATA MUNICIPAL CORPORATION

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 25th March, 2021.

(Via Video Conference)

Appearance:
Mr. Pranit Bag, Adv.
Mr. Partha Banerjee, Adv.

Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
Mr. Rudranil De, Adv.

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

The parties entered into an agreement dated January 11, 2012. The agreement was for Computer Aided Learning Programme under the Kolkata Municipal Corporation Primary Schools. The agreement contains a Clause for arbitration which is as follows:

“In case of any differences or dispute or controversy or claim arising out of this agreement, the same shall be settled by mutual

negotiations failing which the matter will be referred to an Arbitrator, mutually acceptable whose decision thereon shall be binding on both the parties. The place of arbitration shall be at Kolkata, West Bengal.

KMC may, at its sole discretion at any time terminate the contract and inform the contractors of KMC's decision by prior notice of 30 days."

The petitioner raised and submitted bills with the respondent for payment. The last of the bills were of 2015. The petitioner received part payments also in 2015. Last payment was May, 2014. The petitioner filed a writ petition being WP No.120 of 2018 which was disposed of on December 5, 2019 after returning a finding that there are claims and counter claims between the parties which require an adjudication at a full fledged trial on evidence. The petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on January 22, 2020. The respondent did not agree to the appointment of an Arbitrator.

It is the contention of the respondent that, the petitioner did not perform its obligations under the agreement dated January 11, 2012. The bills of the petitioner are inflated. The petitioner was paid for the work that the petitioner undertook. The claim is barred by limitation. The Writ Court took note of the claim being barred by limitation and therefore, did not entertain the writ petition. The respondent made excess payment which the petitioner is liable to refund.

Limitation is a mixed question of fact and law. Limitation is also a jurisdictional fact. In considering an application under Section 11 of the Act of 1996, the Court is to refer the disputes to arbitration, in the event, the Court

finds that there is an Arbitration agreement between the parties and if the Court is in a doubt as to whether the claim is barred by limitation or not.

In the facts of the present case, the issue of limitation looms large. However, in the facts of the present case it cannot be with certainty at this stage, that the claim is wholly barred by limitation.

There are claims and counter claims between the parties. The Writ Court did not entertain the writ petition on the ground that there are disputed questions of fact involved which requires full fledged trial on evidence. The petitioner issued notice under Section 21 of the Act of 1996 immediately after the order of the Writ Court. The effect of the conduct of the parties on the issue of limitation should be decided by the learned Arbitrator.

In such circumstances, since there exists an arbitration agreement between the parties, and since the Court is unable to retain a conclusive finding on the point of limitation, it would be appropriate to refer the disputes between the parties to the arbitration.

In such circumstances, Mr. Justice Pratap Kumar Ray (Retired) is appointed as the Arbitrator in terms of the arbitration agreement. The learned Arbitrator will fix his remuneration to be shared by the parties equally. The costs and expenses of the arbitration will be borne by the parties in equal shares. The parties are at liberty to communicate this order to the learned Arbitrator.

AP No. 177 of 2020 is disposed of accordingly.

(DEBANGSU BASAK, J.)

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