

IN THE HIGH COURT AT CALCUTTA
(Original Side)

AP No.192 of 2021
(Through Video Conferencing)

KEJRIWAL CASTINGS LIMITED

....Petitioner(s)

Through : Mr. Jayanta Sengupta,
Mr. Ayan Dutta,
Mr. Sanjay Kumar Baid (VC), Advocates

v/s

ENVIRO SERENE

....Respondent(s)

Through : (None)

With

AP No.196 of 2021
(Through Video Conferencing)

KEJRIWAL CASTINGS LIMITED

....Petitioner(s)

Through : Mr. Jayanta Sengupta,
Mr. Ayan Dutta,
Mr. Sanjay Kumar Baid (VC), Advocates

v/s

ENVIRO SERENE

....Respondent(s)

Through : (None)

Coram : HON'BLE MR. JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)

O R D E R

1. This order will dispose of two applications bearing AP Nos. 192 and 196 of 2021. The prayer made in both the applications is for appointment of arbitrator for resolution of dispute between the parties. The facts have been noticed from AP No. 192 of 2021.

2. Learned Counsel for the applicant submitted that the petitioner is one of the pioneer manufacturer in the field of Ductile Iron/Cast Iron products viz. pipes, fittings, valves, special and general castings. The applicant was setting up its new plant. The respondent being manufacturer of Centrifugal Fans, Centrifugal Blower, ETP System and other industrial equipments, approached the applicant for sale of the aforesaid products. As agreed between the parties, the petitioner placed order for purchase of certain items on January 17, 2019. The delivery was to be made within a period of eight weeks. Advance to the tune of 40% of the value of the order was to be given. Balance was to be paid in terms of the conditions agreed upon. The applicant made advance payment of ₹2,98,384/- to the respondent on February 18, 2018 and another sum of ₹5,07,253/- was paid on March 20, 2019. It was on receipt of proforma invoice dated March 04, 2019 from the respondent. Despite receipt of the aforesaid amount, the respondent failed to deliver the product. The applicant sent email to the respondent on August 09, 2019 for delivery of the equipments and erection thereof, however, the respondent failed to do the needful. As mutually agreed, the last date for delivery was extended till August 16, 2019. The respondent still failed to adhere to the timeline. Further extension was sought and agreed upon by the applicant till August 31, 2019. The respondent only delivered equipments worth ₹4,34,900.80/- and failed to deliver the rest of the material despite repeated extensions sought by him. As a result of non-supply of the equipments, the project of the applicant was delayed. Even the

cheque issued by the respondent as security to ensure timely delivery of the equipments was returned by the bank with the note 'Funds insufficient'.

3. Applicant served a notice dated February 09, 2021 invoking arbitration clause for settlement of dispute. Though the same was delivered to the respondent, however, no response was received. He further submitted that the conduct of the respondent even before this Court is evasive as despite service of notice for today, no one has put in appearance. The prayer is for appointment of arbitrator.

4. On July 29, 2021, when the application was taken up for hearing, the submission of the learned Counsel for the applicant was recorded that notice was served on the respondent, however, when the application was taken up for hearing, no one appeared for the respondent. The application was adjourned to September 27, 2021. The applicant was required to serve fresh notice on the respondent. Affidavit of service has been filed. It shows that notice was sent by the learned Counsel for the applicant to the respondents by registered post along with the copy of the order passed on July 29, 2021, which as per the website tracking of the consignment, was delivered to the addressee on August 07, 2021. The applications were taken up twice, however, no one appeared for the respondent. It shows that the respondent is not interested to defend the claim made by the applicant for appointment of an arbitrator. The respondents had even failed to respond to the notice issued by the Counsel for the applicant before filing the present application. Hence, the applications are taken up for final disposal.

5. The arbitration clause in the purchase order dated January 17, 2019 issued by the applicant to the respondent is extracted below.

“14.0 DISPUTES & ARBITRATION:

All disputes or difference whatsoever arising between us and yourselves in connection with the contract, which cannot be settled through mutual negotiations in good faith, either of us

may give the other notice in writing of the existence of such question, dispute or difference. The same shall be settled in accordance with the provisions of Indian Arbitration Act. The arbitrator shall be a person qualified to be appointed as an arbitrator under the provision. The award of the arbitrator shall be final and binding on the parties and the persons claiming under them. Work under the contract shall continue, so far as may be reasonably practical, during the arbitration proceedings, and no payments which may or shall become due shall be withheld on account of such proceedings. The venue of arbitration shall be Kolkata.”

6. As the respondent has failed to respond to the present application, raising any dispute of the facts stated by the applicant and further, as has been noticed above, had failed to even respond to the earlier notice issued by the Counsel for the applicant calling upon him invoking the arbitration clause, in my opinion, it is a fit case in which an arbitrator deserves to be appointed to resolve the dispute between the parties. Ordered accordingly.

7. Mr. Samar Roy (Retired District Judge), resident of 50A, Peary Mohan Roy Road, Chetla, Kolkata – 700027, (Mob. No 8334021008, 9681356032) is appointed as arbitrator to resolve the dispute between the parties. He will settle his own fee to be shared equally by the parties.

8. The present application is accordingly disposed of.

9. A copy of this order be sent to Mr. Samar Roy by the Registrar General of this Court.

(RAJESH BINDAL)
CHIEF JUSTICE, (ACTING)

KOLKATA
27.09.2021

PA(RB)