

ORDER SHEET

AP 283 of 2020  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

INDWELL CONSTRUCTIONS PVT. LIMITED  
VS  
BHARAT HEAVY ELECTRICALS LIMITED (BHEL)

BEFORE:  
The Hon'ble JUSTICE DEBANGSU BASAK  
Date: 11th March, 2021.

(Via Video Conference)

Mr. Chayan Gupta,  
Mr. S. Pal Choudhuri,  
Mr. A.V.S. Subramonium,  
Ms. Diya Nandi, Adv.  
...for the petitioner

The Court: The application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is taken up for consideration subsequent to the order dated October 14, 2020.

None appears for the respondent despite service.

The respondent floated a notice inviting tender dated April 19, 2014 in which the petitioner participated.

The petitioner was declared as the successful bidder. The notice inviting tender contained two packages namely, package A and package B. The petitioner was declared as the successful bidder in respect of package B. The respondent issued a letter of intent dated September 13, 2014 to the petitioner. The respondent issued another letter of the same date for the service component under package B of the contract. The respondent issued a detailed work order on March 17, 2015. The petitioner accepted the work order by a writing dated October 20, 2014.

By reason of the concluded contract coming into effect by exchange of letters as aforesaid and in view of the terms and conditions of the Notice Inviting Tender, the General conditions of Contract governing the contract between the parties came into effect. The General Conditions of Contract contains an arbitration clause which is clause

66. Clause 66.1 of the arbitration clause of the General Conditions of Contract specify that, disputes and differences shall be referred to the sole arbitration of the arbitrator appointed by the respondent.

In 2019 SCC OnLine SC 1517 (Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.), the Supreme Court takes note of various authorities including (2007) 8 SCC 77 (Walter Bau AG vs. TRF Limited), Section 12(5) of the Act of 1996 and the Seventh Schedule thereof and is of the view that, a party interested in the arbitration cannot appoint an arbitrator.

In the facts of the present case, the arbitration clause allows the respondent to appoint an arbitrator. Therefore, in view of the ratio of Perkins Eastman Architects DPC (supra) the Court is required to appoint an arbitrator. Moreover, there is no material on record to suggest that, the respondent appointed an arbitrator and that the petitioner accepted such appointment.

In such circumstances, Mr. Justice Prasenjit Mondal (retired) is appointed as the arbitrator with regard to the disputes between the parties. Learned arbitrator will fix his remuneration, which shall be paid by the parties in equal shares. The parties will bear costs, charges and expenses of the arbitration in equal share.

AP 283 of 2020 is disposed of accordingly.

(DEBANGSU BASAK, J.)

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