

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Original Civil Jurisdiction

AP/294/2020

THE HOOGHLY MILLS COMPANY LIMITED
VERSUS
ACUMEN (J) MARKETING PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 5th February, 2021.

*Mr. Sabyasachi Chaudhury, Adv.
Mr. Rajarshi Dutta, Adv.
Ms. Mudrika Khaitan, Adv.
...for petitioner*

*Mr. Subhasish Sengupta, Adv.
Mr. Subhradal Choudhury, Adv.
Mr. Soumo Bhattacharya, Adv.
Mr. Rijit Chakraborty, Adv.
...for respondent*

The Court: This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Facility Service Agreement dated December 1, 2016 [hereinafter referred to as the “said Agreement”] entered into by and between the parties.

The said Agreement between the parties contains an Arbitration Clause. This is not in dispute.

When the matter was taken up by this Court on January 12, 2021, the respondent had argued that the Arbitration Clause contained in Article 14.1 of the said Agreement contemplates that the parties shall firstly amicably and mutually try to resolve the disputes and differences that may arise between them. Only if such an effort fails, the disputes will be referred to arbitration. This Court had adjourned the matter for two weeks to enable the parties to resolve the disputes amicably.

Today Mr. Chaudhury appearing for the petitioner says that the parties sat across the table but it was not possible to resolve the disputes amicably. The disputes relate to the rates payable to the petitioner by the respondent. The gap between the figures suggested by the parties is so big that the disputes cannot be resolved amicably.

Mr. Sengupta appearing on behalf of the respondent referred to a decision of the Delhi High Court in the case of *Ravindra Kumar Verma vs. M/s. BPTP Ltd. & Anr.*, reported in 2014 SCC OnLine Del 6602 : (2015) 147 DRJ 175, in support of his submission that where the arbitration clause contemplates an initial effort for resolving disputes amicably, a Conciliator should be appointed prior to the disputed matters being taken up by the Arbitral Tribunal. He submitted that it is not that an application under Section 11(6) of the 1996 Act will be maintainable only after exhausting the avenue of conciliation, but an arbitration proceeding should be preceded by a conciliation proceeding if the concerned arbitration clause so envisages.

I have considered the respective submissions made on behalf of the parties. In the present case, this Court had once adjourned the matter to enable the parties to resolve the disputes in a friendly manner. Such an effort has failed. Mr. Chaudhury representing the petitioner in no uncertain terms informs this Court that a conciliation would be a futile exercise and his client is not interested in such a proceeding. This will only delay the matters.

I am of the view that a conciliation proceeding cannot be imposed on the parties. Only if the parties agree, can the Court direct holding of a conciliation proceeding. In the present case, the respondent's request for conciliation has evidently been rejected by the petitioner by not even responding to such request. The decision in the Delhi High Court case may have been rendered in the special facts and circumstances of the case. In any event, I have expressed my view that unless all parties agree, it would be improper for the Court to direct holding of a conciliation proceeding.

As noted above, there is no dispute that an Arbitration Agreement exists between the parties hereto. It is also not in dispute that disputes have arisen between the parties. In any event, the Court is not to look into such a question in view of Section 11(6A) of the 1996 Act and the decision of the Hon'ble Supreme Court in the case of *Duro Felguera, S.A. vs. Gangavaram Port Ltd.*, reported in (2017) 9 SCC 729.

In view of the aforesaid, the petitioner's prayer for appointment of sole Arbitrator has to be allowed. The only question is whether Mr. Partha

Pratim Roy, Advocate, should be appointed as sole Arbitrator as prayed for by the petitioner.

I am told that Mr. Roy is acting as the sole Arbitrator in respect of disputes that have arisen between the respondent herein and the parent company of the petitioner herein. The subject matter of the said arbitration proceeding is similar to that of the present matter. Hence, in my opinion it would be beneficial and convenient for all concerned if Mr. Roy is appointed as the sole Arbitrator also in this matter.

As far as the appointment of Mr. Roy as the sole Arbitrator is concerned, the respondent has no objection.

Accordingly, Mr. Partha Pratim Roy, Advocate, Bar Association Room No.11, is appointed as the sole Arbitrator to adjudicate the disputes between the parties hereto arising out of the Facility Service Agreement dated December 1, 2016. The learned Arbitrator will be free to fix his remuneration and other incidental expenses in relation to the arbitration proceedings which are to be borne by the parties in equal shares.

Disputes have arisen between these two parties in relation to four agreements entered into by and between them in respect of two units. Four arbitration petitions have been filed including the present one for appointment of sole Arbitrator. All the arbitration petitions have been allowed. The parties jointly pray that the four arbitration proceedings may be consolidated as that would save time and will otherwise be more convenient.

Let that be done. Let the four arbitration proceedings be consolidated.

Since no affidavits have been called for, the allegations made in the petition shall be deemed not to be admitted by the respondent.

AP 294 of 2020 is, accordingly, disposed of.

There will be no order as to costs.

(ARIJIT BANERJEE, J.)