

ORDER

OD-9

AP/297/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

M/S. NOVATEUR ELECTRICAL AND DIGITAL SYSTEMS PVT. LTD.
VERSUS
M/S. BIL INFRATECH LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 24th November 2021.

[Via Video Conference]

APPEARANCE:

Ms. Sonal Shah, Advocate,
Mr. Kushagra Shah, Advocate,
Mr. Aniket Chaudhury, Advocate
.....for the Applicant.

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of an Arbitrator to resolve the dispute between the parties. The case of the applicant is that the purchase order dated 7th June 2018 was issued by the respondent upon one M/s. Adlec Power Private Limited which has subsequently merged with the applicant company vide order dated 9th August 2019. The further case of the applicant is that though in pursuance to the purchase order, supplies were made by the applicant, but only a part payment was made and remaining payment of about Rs.22 lakh is still due. The applicant had given the notice dated 8th March 2021 invoking the arbitration clause and suggesting the name of the arbitrator for resolving the dispute between the parties, but in spite of service of notice, no response was received from the respondent. Hence this application has been filed.

The purchase order contains following arbitration clause:-

“19. DISPUTES

Both parties agreeing, dispute arising out of this order, may be settled by arbitration, in accordance with the Indian Arbitration and

Conciliation Act, 1996, by a sole arbitrator, who shall be appointed by our MD and/or our Chairman and/or other directors.”

Learned counsel for the applicant has submitted that in terms of the aforesaid arbitration clause, the sole arbitrator was required to be appointed by the MD or Chairman or Director of the respondent company, but the same is not permissible in view of the judgment of the Supreme Court in the matter of *Perkins Eastman Architects DPC & Another v. HSCC (India) Limited* reported in 2019 SCC OnLine SC 1517.

Having regard to the aforesaid, I am of the opinion that the case for appointment of the arbitration for resolving the dispute between the parties is made out.

Accordingly, AP No.297 of 2021 is disposed of by appointing Mr. Sachchida Nand Pandey, Advocate, 21, North Purbachal Kalitala Link Road, Kolkata – 700 078 (M:9007285496/8240503869) as the arbitrator to resolve the dispute between the parties.

(PRAKASH SHRIVASTAVA, C.J.)