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AP No. 319 of 2020
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

TARUN KANTI DAS
VS.
UNION OF INDIA AND ANR.

BEFORE:
THE HON'BLE JUSTICE ARIJIT BANERJEE
Date: February 12, 2021.

Appearance:
Mr. Amitava Ghosh, Adv.
Mr. Malay Kr. Das, Adv., Adv.
Mr. Sourav Chatterjee, Adv.

Ms. Aparna Banerjee, Adv.

The Court: The petitioner seeks appointment of an independent sole arbitrator in this application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for resolution of the disputes and differences that have arisen between the petitioner and the respondent.

It is not in dispute that the petitioner was awarded a contract by the Railways. It is also not in dispute that the contract between the parties incorporated by reference the general terms and conditions of contract which included an arbitration clause. Existence of the arbitration clause is not in dispute.

It is also not in dispute that disputes have arisen between the parties. The petitioner served notice under Section 21 of the Act of 1996 calling

upon the General Manager of the concerned Railways to appoint an arbitrator in terms of the contractual arbitration clause. The time period for such appointment expired but no such appointment was made.

Subsequently, i.e. after expiry of 30 days from the date of the Section 21 notice, the Railways served on the petitioner a notice of waiver of the applicability of Section 12(5) read with Seventh Schedule of the 1996 Act. The petitioner was not willing to do so. Accordingly, no appointment came to be made although on 4th March, 2020, the Railways sent a panel of arbitrators to the petitioner for selecting two names out of the same. Since the petitioner already rejected the Railways' proposal for waiver of applicability of Section 12(5) of the 1996 Act, the petitioner naturally did not choose any of the names from the panel forwarded by the Railways.

In the aforesaid factual background, the petitioner has filed the instant application for appointment of a sole independent arbitrator.

I have heard learned counsel for the parties. I have considered the decision of the Hon'ble Supreme Court in the case of *Central Organisation for Railway Electrification -vs- ECI-SPIC-SMO-MCML (JV)* A Joint Venture Company (2019 SCC OnLine SC 1635). I have also considered the order of the Hon'ble Supreme Court passed on January 11, 2021 in the case of *Union of India -vs- M/s. Tantia Constructions Limited* (Special Leave Petition No.12670/2020) wherein a three Judges Bench has requested the Hon'ble Chief Justice of India to constitute a Larger Bench to look into the correctness of the judgment in the case of *Central Organisation for Railway Electrification -vs- ECI-SPIC-SMO-MCML (JV)* (2019 SCC OnLine SC 1635).

Mr. Ghosh, learned advocate for the petitioner, has relied on the decision of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC -vs- HSCC (India) Ltd.* (AIR 2020 SC 59).

I have considered the facts and circumstances of the case. The petitioner did not agree to waive the applicability of Section 12(5) of the Act of 1996. The petitioner was well within his rights to do so. The concerned arbitration clause does not contemplate as to what would happen if the petitioner disagrees to waive the applicability of Section 12(5) of 1996 Act. In such circumstances, in my opinion, the only way forward is for the Court to appoint an independent arbitrator.

Accordingly, Justice Ranjit Kumar Bag (Retd.), a former Judge of this Court (8335073594, 9433898375) is appointed as the sole arbitrator to adjudicate the disputes and differences that have arisen between the parties in relation to the subject contract. The arbitrator will be entitled to engage secretarial staff for conducting the arbitral proceedings. Since no place of sitting is agreed upon, let the arbitration proceeding be held in Calcutta. The arbitrator will be free to fix his fees and the remuneration of the secretarial staff. The fees of the arbitrator and the remuneration of the secretarial staff will be paid by the parties in equal shares.

AP No. 319 of 2020 is, accordingly, disposed of.

(ARIJIT BANERJEE, J.)