

ORDER SHEET

OD-8

AP No. 329 of 2020
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

GILLANDERS ARBUTHNOT & CO. LTD.
VERSUS
STEEL AUTHORITY OF INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 25th March, 2021.

(Via Video Conference)

Appearance:
Mr. Abhijit Ray, Adv.
Mr. Subhan Gupta, Adv.
For the petitioner.

Mr. Anirban Ray, Adv.
Mr. Prantik Garai, Adv.
For SAIL.

The Court :- The petition is under Section 11[6] of the Arbitration and Conciliation Act, 1996.

The parties entered into a contract dated June 27, 2007. The parties acted on the basis thereof. According to the petitioner, the respondent did not pay the petitioner the entirety of the amount that the petitioner is entitled to under the contract. The respondent withheld an amount lastly on May 25, 2017. The petitioner invoked the arbitration agreement by writing dated February 6,

2020. The petitioner relies upon an agreement, which is forming part of the Special Conditions of Contract.

Learned Advocate appearing for the respondent submits that, the contract agreement dated June 27, 2007 provides the precedence of the documents. He refers to article 9 of the contract documents. He submits that article 13 of the contract documents governs the field in view of the precedence provided in article 9. Learned Advocate appearing for the respondent relies upon the arbitration clause and submits that, the petitioner is yet to approach the designated forum being SCOPE Forum of Conciliation & Arbitration for appointment. Therefore, according to him, the petition is premature.

Learned Advocate appearing for the respondent also seeks an extension of time to file affidavit in opposition.

The petition is pending since 2020 it was taken up on December 8, 2020, and on February 11, 2021 when the petitioner did not appear. On both the two days it was dealt with by the co-ordinate Bench. There were directions for affidavits given on March 4, 2021. The respondent did not file any affidavit in opposition. In the facts of the present case, I do not think that any extension of time to file affidavit will serve any fruitful purpose. Therefore, prayer for extension of time to file affidavit is, therefore, rejected.

The contract agreement provides for precedence of document in Article 9. The Article 9 states that, the contract agreement will have precedence over the Special Conditions of Contract. The contract agreement contains an

arbitration clause. The arbitration clause in the contract agreement is at variance with the arbitration agreement at the Special Conditions of Contract.

In view of Article 9 of the contract agreement, the arbitration agreement in the contract agreement will prevail over the Special Conditions of Contract. The arbitration agreement in the contract agreement is as follows:-

Article-13

Any dispute or difference whatsoever arising between the parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract of the validity or the breach thereof, shall be settled by arbitration in accordance with the Rules of Conciliation & Arbitration 2003 of SCOPE Forum of Conciliation & Arbitration as per clause no.12 of SCC and 13 & 14 of GCC.

The petitioner invoked the arbitration agreement by writing dated February 6, 2020. The respondent did not respond thereto. The respondent also did not approach SCOPE for the purpose of arbitration. Disputes and differences remain the outstanding between the parties governed by the arbitration agreement.

In such circumstances, in my view, interest of justice would be subserved by requiring the petitioner to approach SCOPE for the purpose of appointment of an arbitrator in terms of the arbitration agreement. On SCOPE being so approached, no doubt it will proceed to appoint arbitrator in accordance with law. The petitioner will do so within a fortnight from date.

AP No. 329 of 2020 is disposed of accordingly.

(DEBANGSU BASAK, J.)

snn.