

OD-9

ORDER SHEET  
IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
(Via Video Conference)

AP/335/2020

AIRCARE ENTERPRISES AND ORS.  
Versus  
LEVER FOUNDATION, WEST BENGAL AND ANR.

BEFORE:  
The Hon'ble JUSTICE ARIJIT BANERJEE  
Date : 15<sup>th</sup> February, 2021.

*Appearance :*  
*Mr. Debnath Ghosh, Adv.*  
*Mr. Arijit Dey, Adv.*  
*...for the petitioners*

*Mr. Srijib Chakraborty, Adv.*  
*Mr. Arindam Das, Adv.*  
*...for the respondents*

The Court : Supplementary affidavit of service filed in Court be taken on record.

The petitioners and the respondent no. 1 entered into a works contract. The work was for erection, installation, commissioning of a heating, ventilation and air-conditioning system. Disputes have arisen between the parties in relation to the subject contract. The contract contains an arbitration clause. The petitioners have approached this Court by way of this application under Section 11(6) of the Arbitration & Conciliation Act, 1996, for appointment of a sole arbitrator for adjudication of the disputes that have arisen between the parties.

I have heard Mr. Ghosh, learned Advocate appearing for the petitioners and Mr. Chakraborty, learned Advocate appearing for the respondents. The arbitration clause is not in dispute. It is also not in dispute that disputes have arisen between the parties pertaining to the subject contract. In view of Section 11(6A) of the Arbitration and Conciliation, 1996 and the decisions of the Hon'ble Supreme Court of India starting from the case of *Duro Felguera, S.A. v. Gangavaram Port Limited* reported in (2017) 9 Supreme Court Cases 729, I need not look into any other matter.

Mr. Chakraborty, learned Advocate appearing for the respondents submits that the petitioners' claim is hopelessly barred by limitation. This is not an issue which the Court will consider while deciding an application for appointment of an arbitrator. It will be for the arbitrator to consider the issue of limitation. It is further made clear that the respondents will be entitled to file counter-claim, if any, before the arbitrator, which they may have against the petitioners.

Accordingly, I appoint Mr. Prabal Mukherjee, Senior Advocate, Bar Association, High Court at Calcutta, as the sole arbitrator to adjudicate upon the disputes that have arisen between the parties in relation to the subject contract. The arbitrator will be at liberty to fix his own fees. He will be entitled to engage secretarial staff for holding arbitration proceedings. He will also fix the remuneration of the secretarial staff. The arbitrator's fees and the remuneration of the secretarial staff will be borne by the parties in equal shares.

A.P. No. 335 of 2020 is accordingly disposed of.

(ARIJIT BANERJEE, J.)

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