

ORDER SHEET

AP 413 of 2019
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BHARAT BIJJLEE LIMITED
VS
DAMODAR VALLEY CORPORATION

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 23rd March, 2021.

(Via Video Conference)

Mr. R.K. Mitra,
Mr. D. Choudhury,
Mr. S. Choudhury,
Mr. S. Bhattacharya, Advs.
...for the petitioner
Mr. Subradal Choudhury, Adv.
...for the respondent

The Court: The petitioner seeks appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The respondent issued a notice inviting tender dated October 7, 2013 in which the petitioner participated. The parties entered into a contract in respect of such notice inviting tender. According to the petitioner, it discharged its obligation in terms of the contract. The petitioner raised bills upon the respondent. The respondent made part payments. The respondent did not pay the entirety of the bill amount. The last payment made by the respondent was on November 3, 2015. The petitioner invoked the arbitration clause in the contract on October 15, 2018.

Learned advocate appearing for the respondent submits that, the petitioner is relying upon a wrong clause of the contract to contend that there is an arbitration agreement. There is in fact an arbitration agreement between the parties but it is at a different clause. He submits that, the claim of the petitioner is barred by limitation.

So far as the arbitration agreement is concerned, it is not disputed by the parties that there is an arbitration agreement governing the field and that the dispute arising between the parties as noted in the notice invoking arbitration agreement dated October 15, 2018 are covered by the arbitration agreement.

So far as point of limitation is concerned, prima facie, I find that, the last payment made by the respondent was on November 3, 2015 with the invocation being made on October 15, 2018 that is within the period of three years from the date of the last payment. The respondent did not appoint any arbitration despite the receipt of the letter dated October 15, 2018 and the respondent replying thereto.

The issue of limitation however is kept open to be decided at the arbitration.

It would be appropriate to appoint Mr. Justice Tapan Kumar Dutt (retired) as the arbitrator in terms of the arbitration agreement between the parties.

Learned arbitrator is at liberty to fix his remuneration which will be shared equally by the parties.

The parties will bear the costs and expenses of the arbitration in equal share.

The parties are at liberty to communicate this order to the learned Arbitrator.

AP 413 of 2019 is disposed of accordingly.

(DEBANGSU BASAK, J.)

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