

OD-35

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(Via Video Conference)

AP/371/2020

RREPL – KIPL (JV)
VERSUS
EASTERN COALFIELDS LTD.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 9th April, 2021.

Appearance:
Mr. Sudip Deb, Adv.
Mr. Riju Ghosh, Adv.
...for the petitioner

Mr. Krishnendu Bhattacharya, Adv.
Ms. Tanushree Dasgupta, Adv.
...for the respondent

The Court :- Affidavits filed in Court be taken on record.

This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The parties entered into a contract. Such fact is not disputed.

The contract contains an arbitration clause which is as follows:-

“13. Settlement of Disputes

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty)

days of arising of the cause of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.

Effort shall be made to resolve the dispute in two stages.

In first stage dispute shall be referred to Area CGM, GM. If difference still persists the dispute shall be referred to a committee constituted by the owner. The committee shall have one member of the rank of Director of the company who shall be chairman of the company.

If differences still persist, the settlement of the dispute shall be resolve in the following manner:

Disputes relating to the commercial contracts with Central Public Sector Enterprises/Govt. Departments (except Railways, Income Tax, Customs & excise duties)/State Public Sector Enterprises shall be referred by either party for Arbitration to the PMA (Permanent Machinery of Arbitration) in the department of Public Enterprises.

In case of parties other than Govt. Agencies, the redressal of the dispute may be sought in the Court of law.”

The existence of the arbitration agreement is not disputed.

Disputes and differences arose between the parties with regard to the contract in question. The petitioner referred the disputes by a letter dated August 11, 2020 to the General Manager-in-Charge of the project. According to the petitioner, such reference is in accordance with clause 13 of the contract read with the definition of ‘engineer-in-charge’ given in the contract.

Learned Advocate appearing for the respondent contends that, the demand for arbitration is not in accordance with clause 13 of the agreement. The petitioner is guilty of delay in execution of the work and that, there is a claim of the respondent as against the petitioner.

On a query from the Court as to whether, the respondent took any steps for the purpose of realizing its claim as against the petitioner, learned Advocate for the respondent answers in the negative.

Disputes and differences therefore persist between the parties. The disputes and differences are not shown to be beyond the arbitration agreement.

The contention of the respondent that, the reference is not in accordance with the arbitration agreement, prima facie does not appear to be correct. The petitioner made a reference, by the writing dated August 11, 2020 to the General Manager-in-Charge of the project. The same remains unresolved. Again, the issue as to whether, there is a compliance with regard to the invocation of arbitration may be left for the Arbitrator to decide. The merits of the disputes between the parties will obviously require adjudication in the arbitration. In such circumstances, it would be appropriate to refer the parties to arbitration in terms of Clause 13 of the contract documents.

Mr. Justice Sahidullah Munshi (Retired) is appointed as the Arbitrator in terms of Clause 13 of the contract documents between the parties. The learned Arbitrator is at liberty to fix his remuneration which will be shared by the parties equally. The parties will bear costs and expenses of the arbitration equally.

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

AP/371/2020 is disposed of accordingly.

(DEBANGSU BASAK, J.)

