

AP/367/2021
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

M/S. BLUE STAR LIMITED
VERSUS
SHRIRAM EPC LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 6th December, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Satadeep Bhattacharyya, Advocate
Mr. Avisekh Guha, Advocate
Ms. Akansha Chopra, Advocate
.....for the applicant
Mr. Ajay Gaggar, Advocate
.....for the respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the disputes between the parties.

Three purchase orders all dated 11.3.2011 were issued by the respondent to the applicant in respect of the Medium Structural Mill at Durgapur Steel Plant. These purchase orders contained the following identically worded arbitration clause:-

“7.0 ARBITRATION:

Any disputes, differences, whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract shall be settled between the Employer and the contractor amicably. If however, the Employer and the Contractor are not able to resolve their disputes/differences amicably as aforesaid the said disputes/differences shall be settled by conciliation, failing which, through Arbitration at City of Kolkata.”

Submission of learned counsel for the applicant is that in pursuance to the said purchase orders, certain amount was due and payable to the applicant which was not paid by the respondent, therefore, the discussion had taken place between the parties and on 14th February, 2017 and by Annexure-C, it was agreed that the respondent will make a payment of Rs.60 lakhs to the applicant, but thereafter only a part amount was paid and the full was not paid. Therefore, the applicant invoking the arbitration clause had given the notice dated 3rd March, 2021 to the respondent suggesting the name of the sole arbitrator but in the reply dated 27th March, 2021, the respondent had not accepted the sole arbitrator so suggested by the applicant but had proposed the name of another sole arbitrator. Hence, the dispute in respect of the name of the arbitrator remains unresolved. Therefore, this application is made.

Learned counsel for the respondent has not disputed the arbitration agreement but he has raised an objection that before invoking arbitration clause, conciliation ought to have been done and for all three separate purchase orders, one AP cannot be maintained.

Having regard to the scope of Section 11 of the Act and also considering the fact that the parties themselves by exchange of notice had reached to the stage of appointment of arbitrator and the only dispute was in respect of the name of the sole arbitrator, I am of the opinion that the submission made by the counsel for the respondent for sending the parties to conciliation at this stage cannot be accepted. So far as the objection relating to maintaining one AP for three separate purchase orders is concerned, it is noticed that the purchase orders were in respect of the same projects, the running accounts were maintained for the three orders and that while arriving at the figure of 60 lakhs for the balance amount, all the three purchase orders were considered and the notice invoking the arbitration clause and reply thereof also relates to all the three purchase orders. Therefore, this objection also cannot be accepted.

In view of the above and considering the fact that undisputedly arbitration clause exists between the parties and dispute has arisen, I am of the opinion that a case is made for allowing the AP for appointment of arbitrator. Accordingly, AP No.367 of 2021 is allowed by appointing Mr. Kaushik Dey, Advocate, Bar Association Room No.2, (9830467715) as arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)