

ORDER SHEET

AP/809/2019

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

NAMUDURI SUBBARAO
VS
MCNALLY BHARAT ENGINEERING COL LTD.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 19th March, 2021.
(Via Video Conference)

Appearance:
Mr. Syed E. Huda, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Avishek Das, Adv.

Mr. Anubhav Sinha, Adv.
Ms. Pallavi Roy, Adv.

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

The respondent issued purchase order dated July 23, 2015 on the basis of which, the parties altered their mutual position. The purchase order contains an arbitration clause, which is as follows:

“27.1 All disputes and differences, whatsoever, arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Contract or Breach thereof shall be settled between MBE and the Contractor amicably. In the event the same is

not sorted out amicably, then settlement shall be done by arbitration in accordance with provisions of the 'Conciliation and Arbitration Act', 1996 by Sole Arbitrator to be appointed by Managing Director, MBE. The further progress of any work under the contract shall be stopped unless otherwise directed by MBE's Engineer during arbitration proceedings and no payment due or payable by MBE shall be withheld on account of such proceedings. It shall not be open to Arbitrator to consider and decide whether or not such work shall continue during the arbitration proceedings.

Provided further no reference to arbitration, whether the final bill for the work has been passed or not shall be made later than six months from the date of satisfactory completion of work under the contract. No interest shall be awarded by the Arbitrators in any arbitration proceedings. The venue of arbitration shall be in Kolkata. Governing law shall be laws of India and the language shall be in English."

Dispute and differences arose between the parties by reason of which the petitioner issued a notice of appointment of an Arbitrator on February 11, 2019. The respondent did not appoint any Arbitrator. An application under Section 11 of the Arbitration and Conciliation Act, 1996 was filed on April 3, 2019. The last bill raised by the petitioner was on April 11, 2016. Such application under Section 11 of the Arbitration and Conciliation Act, 1996 was found to be defective and was allowed to be dismissed as withdrawn by the order dated November 28, 2019 with liberty to file afresh

on the self-same cause of action. The present application was affirmed on December 2, 2019.

The petitioner proceeded *bonafide* before this Hon'ble Court for appointment of an Arbitrator in AP 249 of 2019, and the same being allowed to be withdrawn with liberty to file afresh on the self-same cause of action on November 28, 2019 and the present application being affirmed on December 2, 2019, in my view the petitioner is entitled to the benefit of Section 14 of the Limitation Act, 1963. At this stage, it cannot be said with certainty that the claim of the petitioner is barred by the laws of limitation.

Consequently, Mr Atis Dipankar Roy, Advocate Phone Number 9830172565 is appointed as an Arbitrator in terms of the arbitration agreement between the parties.

Learned Arbitrator is at liberty to fix his remuneration.

The parties will share the remuneration of the learned Arbitrator equally.

The parties will bear the cost and expenses of the arbitration equally.

AP 809 of 2019 is disposed of accordingly.

(DEBANGSU BASAK, J.)