

ORDER SHEET

AP/770/2018

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

UTKARSH INDIA LIMITED
VERSUS
UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date : 24th March, 2021.

(Via Video Conference)

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Dwip Raj Basu, Adv.

Mr. Arun Kumar Mishra, Adv.

Mr. Hemant Tiwari, Adv.

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

Learned Advocate appearing for the petitioner relies upon the judgment and order dated March 8, 2021 passed by the Delhi High Court in ARB.P. 553/2020 (*M/s. T.K. Engineering Consortium Pvt. Ltd. Vs. The Director (Projects) Rites Ltd. & Anr.*) and the judgment and order dated March 17, 2021 passed by this Court in AP 297 of 2018 [*Techma Engineering Enterprises Pvt. Ltd. Vs. Union of India Through General Manager (Engineering) South Eastern Railway*] in support of his contentions.

Learned Advocate appearing for the petitioner submits that, in the facts of the present case, the Court may be pleased to appoint an Arbitrator.

The respondent is represented.

The petitioner participated in a tender undertaken by the respondent. The petitioner was successful in such tender process. A purchase order dated June

23, 2017 was placed upon the petitioner. The petitioner effected supplies in terms of such purchase order for the period from November 21, 2017 to December 26, 2017. The petitioner raised 76 invoices upon the respondent for an aggregate value of Rs.14,05,67,805/-. The respondent made part payments leaving a sum of Rs.84,35,429/- payable. The petitioner invoked the arbitration clause on August 16, 2018. The respondent by a letter dated August 21, 2018 refused to accept the nominee of the petitioner.

The defence of the respondent is the same as that taken in *Techma Engineering Enterprises Pvt. Ltd. (supra)*. Such defence was considered and not accepted therein. In view of the ratio of *Techma Engineering Enterprises Pvt. Ltd.(supra)*, the present application is required to be allowed.

In *M/s. T.K. Engineering Consortium Pvt. Ltd. (Supra)*, the Delhi High Court considered similar provisions of contract and is of the view that the defence of non-arbitrability is not available to the respondent in the facts of that case.

In such circumstances, it would be appropriate to appoint Chief Justice Mr. Bhaskar Bhattacharya (Retired) as Arbitrator in terms of the arbitration agreement between the parties.

Learned Arbitrator is at liberty to fix his remuneration to be shared by the parties equally. The parties will bear the cost and expenses of the arbitration in equal share.

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

AP 770 of 2018 is disposed of accordingly.

(DEBANGSU BASAK, J.)