

AP/34/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

M/S. ANKIT METAL AND POWER LIMITED
VERSUS
SHRI JAGDAMBA IRON AND STEELS

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 5th AUGUST, 2022

APPEARANCE:
Mr. Ratnesh Kr. Rai, Advocate
Mr. Ankan Rai, Advocate
Mr. S. N. Pandey, Advocate
Mr. Ashutosh Singh, Advocate
Ms. Ankita Singh, Advocate
....for the applicant

The Court:- In spite of service of notice, no one is present for the respondent.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the independent arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that distributorship agreement dated 1st November, 2019 was executed between the parties and the said agreement contains the following arbitration clause :

“In case of any dispute between the parties, the same shall be referred to the arbitration of the person to be appointed by the Managing Director of the Company as sole arbitrator whose decision will be final and binding upon the parties. Such Arbitration shall proceed in accordance with the Arbitration and Conciliation Act, 1996. The Arbitrator shall have summary power.”

He has also pointed out that under the said agreement the respondent had committed default of payment of Rs.84,45,205/-. Therefore,

invoking the arbitration clause notice dated 30th September, 2021 was served upon the respondent and the respondent had sent the reply to the said notice on 12th January, 2022 wherein the execution of the agreement was admitted. He submits that since the dispute exists between the parties and the arbitration agreement also exists, therefore, a sole arbitrator be appointed to resolve the dispute between the parties.

In spite of service of notice, the respondent has chosen not to appear before this Court and contest the above submission of the counsel for the applicant.

Having regard to the above, I am of the opinion that since the arbitration agreement exists between the parties and due notice was served as required by Section 21 of the Act, therefore, a case for appointing an independent arbitrator is made out. Accordingly, Justice Md. Mumtaz Khan, a retired Judge of this Court (M No.8336932293) is appointed as sole Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)