

AP/41/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONM/S. MISHRA ELECTRICALS
VERSUS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 10TH JUNE, 2022

APPEARANCE:

Mr. Sauvik Nandy, Advocate

Mr. S. Saha, Advocate

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

The affidavit of service on record indicates that the respondent is served twice, yet it has not chosen to appear in the present case. Record further reflects that the work orders dated 1st August, 2018, 1st March, 2019, 1st June, 2020 and 1st November, 2019 were issued by the respondent in favour of the applicant for civil work at Bijoy Nagar and Daskeary – RCFA Project as also for conduit pipe laying etc. All the work orders contain identical arbitration clause as clause no.24 or 25, which reads as under :

“In the event of any difference or dispute arising out of or in connection with this work order, the same shall be first amicably settled by mutual dialogue. If the parties fail to settle their difference or dispute arising out of or in connection with this work order (including interpretation of the terms thereof), the same shall be referred to arbitration. The Arbitration proceedings shall be conducted by a single Arbitrator appointed by the Company Secretary of Simplex Infrastructures Ltd., and the award/decision of such arbitrator shall be final and binding upon both the parties. The venue of the arbitration shall be Kolkata. However, the work shall not be stopped during the pendency of the proceedings and it shall be ensured that such work is proceeded uninterruptedly.”

It has been pointed out by the learned counsel for the applicant that the contract was in the nature of work contract and that after issuing the work order, the applicant had completed part of the work but payment was not made

by the respondent, therefore, the dispute arose. In terms of the arbitration clause, initially, the attempts were made for amicable settlement of dispute. Paragraph 3 of the application as also the notice dated 3rd January, 2022 mentioned about the attempt for amicable settlement. It is also pointed out that when the attempt failed, the applicant had sent the notice dated 3rd January, 2022 invoking the arbitration clause and making a request to the respondent to appoint arbitrator for resolving the dispute.

In spite of service of notice, respondent had neither given any reply to the said notice nor it had appointed the arbitrator. Hence, this application.

The above averments of the applicant in the application have remained undisputed as no one has appeared before this Court to contest the present application. Record reflects that the arbitration agreement exists between the parties. The attempt for amicable settlement in terms of the arbitration clause has failed and in spite of notice, the arbitrator has not been appointed by the respondent. Hence, a case for allowing the prayer for appointment of an independent arbitrator to resolve the dispute between the parties is made out.

Accordingly, AP is allowed. Mr. Debasis Halde, a retired District Judge is appointed as 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.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)