

ORDER SHEET
AP/78/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

REINFORCED EARTH INDIA PRIVATE LTD.
VS
MCNALLY BHARAT ENGINEERING COMPANY LIMITED (MBECL)

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 29th April, 2022.

Appearance:
Mr. Puspall Chakraborty, Adv.
Ms. Amrita Panja Moulick, Adv.
Ms. Prasanna Ganguly, Adv.
...for the petitioner

The Court: Affidavit of service filed shows that service has been completed upon the respondent company. In spite of service made on two occasions, none has appeared on behalf of the respondent company.

In light of the same, I proceed to dispose of this petition. The agreement between the parties indicates that there is an arbitration clause being Clause 23 in the terms and conditions of the contract. The said clause is delineated below:

“23.0 ARBITRATION:

23.1 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. 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 through

Arbitration in accordance with Rules of the Conciliation and Arbitration Act, 1996 and the statutory modification to the said Act. The award of the arbitrator shall be final and binding on the parties to this contract. The further process of work under the contract shall continue 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. The expenses of Arbitration shall be borne as per the award of arbitration if same are given in the award of arbitration else same shall be borne by the losing party.

No reference to arbitration shall be made later than six months from the date of satisfactory completion of work under the contract, whether the final bill for the work has been passed or not. No interest shall be awarded 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."

It is to be further noted that by a letter dated December 24, 2019, respondent had rejected the claim of the petitioner on the ground of limitation. The petitioner has relied on two judgments passed in *Special Leave Petition (C) No.11476 of 2018 on 27.11.2019 (Uttarakhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Field Limited)* and *Civil Appeal Nos.843-844 of 2021 (Arising out of SLP (C) Nos.1531-32/2021) on 10.03.2021 (Bharat Sanchar Nigam Ltd. and Ors. vs. Nortel Networks India Pvt. Ltd.)* to buttress his point that an Arbitrator is required to be appointed as per Section 16 of the Arbitration and Conciliation Act, 1996.

In view of the above, Mr. Farhan Ghaffar, Advocate (M. No.9830179148), is appointed as Arbitrator. 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/78/2022 is, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)