

ORDER SHEET
AP/109/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

IMPERIUM ENERGY UTILITY SERVICES LLP AND ORS
VS
EASTERN COALFIELDS LTD

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 17th May, 2022.

Appearance:
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Rajarshi Datta, Adv.
Mr. Kanishk Kejriwal, Adv.
Mr. Sarbojit Mukherjee, Adv.
Mr. Meghajit Mukherjee, Adv.
Ms. Shivangi Thard, Adv.
Mr. Vidhya Upadhyay, Adv.
...for the petitioners

Mr. Reetobroto Mitra, Adv.
Mr. Manik Das, Adv.
Ms. Tanushree Dasgupta, Adv.
...for the respondent

The Court: Heard counsel appearing on behalf of the parties. The affidavit-in-reply filed by the petitioner indicates that Synergi India is very much still in existence. This fact is not disputed by counsel appearing on behalf of the respondent.

In light of the same, there is no impediment in this Court appointing an Arbitrator. However, for argument sake Mr. Mitra counsel appearing on behalf of the respondent has raised a point that no Section 21 notice has been issued in

the present case and accordingly, the petitioner should be directed to first issue a Section 21 notice and thereafter approach this Court under Section 11.

Upon reading of the arbitration clause, it is clear that the clause requires the sole Arbitrator to be appointed by the competent authority of the respondent company. The law is very clear on this point and has been settled by the judgment of **TRF Limited (supra)** and **Perkins Eastman Architects (supra)** that the interested party can neither be an Arbitrator nor have the right to appoint an Arbitrator. In light of the same, issue of Section 21 notice would be a mere formality as any appointment made by the authority of the respondent shall be a nullity. Technically, the respondent's argument may hold some water as Clauses 5 and 6 of Section 11 require as a pre-requisite the parties failure to agree on an Arbitrator within 30 days. In the present case, filing of the Section 11 application makes it clear that the petitioner is unwilling to accept the terms of the arbitration (Clause 42(a)) that requires the CMD of the respondent company to appoint an Arbitrator. Since the petitioner is not agreeable to the appointment by the respondent company, date of filing of the Section 11 may be treated as a notice under Section 21.

Accordingly, I feel that there is no need for wasting any further time in appointing the Arbitrator by insisting on issue of the Section 21 notice at this stage.

In view of the above, Justice Pranab Kumar Chattopadhyay, retired Judge of this Court (Tel No.9830929721), is appointed as the 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/109/2022 is, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)