

OD-31

ORDER SHEET

AP/114/2022

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

M/S. ARIHANT ELECTRICALS
-VS-
CHITTARANJAN LOCOMOTIVE WORKS

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : April 21, 2022.

Appearance:

Mr. Rahul Karmakar, Adv.

...for the petitioner

Mr. Kushi Prasun Chatterjee, Adv.

Mr. Aveek Biswas, Adv.

...for the respondent

The Court : Affidavit-of-service filed in Court is taken on record.

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

From the facts it appears that the petitioner has entered into a contract with the Ministry of Railways. This agreement for sale of goods includes an arbitration clause that is as follows:

“2900. Arbitration.

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the

decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organizations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute of difference. The award of the arbitrator shall be final and binding on the parties to this contract.

The clause specifically indicates that a sole arbitrator is to be appointed.

In view of the judgment passed by the Hon'ble Supreme Court in *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377 and in *Perkins Eastman Architects v. HSCC (India) Limited* reported in (2019) 9 SCC Online SC 1517, it is clear that interested parties cannot be appointed as arbitrator and it is upon the Court to appoint an independent arbitrator.

Counsel appearing for the respondent submits that the petitioner has waived his right under the proviso of Section 12 Clause 5 by accepting the arbitration and seeking extension of time for filing of the claim before the Arbitration Tribunal. However, from the documents put forward, it is clear that

the Tribunal that has been formed is of three members and not of a sole arbitrator.

In light of the same, this Tribunal is not as per the agreement between the parties and the mandate given to the Tribunal is set aside.

Accordingly, Mr. Pradipta Ray, retired Judge of this Court 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.

AP No. 114 of 2022 is, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)