

AP/127/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONKERALA STATE ELECTRONICS DEVELOPMENT CORPORATION LTD.
VERSUS
BIDHANNAGAR MUNICIPAL CORPORATIONBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 15TH MARCH, 2022

APPEARANCE:

Mr. Kushal Chatterjee, Advocate
Mr. Subhasish Mitra, Advocate
Mr. Saptarshi Mal, Advocate
.....for the petitioner.

Mr. Sirsanya Bandopadhyay, Advocate
Mr. Arka Kumar Nag, Advocate
Mr. Subhankar Das, Advocate
.....for the respondent.

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

The Arbitration Agreement dated 24th August, 2016 is not in dispute which contains the following arbitration clause:

“B-7 ***Disputes and Arbitration***

In case of any dispute or differences, breach and violation relating to the terms of this agreement, the said dispute or difference shall be referred to the sole arbitration of Mayor of Bidhannagar Municipal Corporation (BMC) or any other person appointed by him. The award of the arbitrator shall be final and binding on both the parties. In the event of such arbitrator to whom the matter is originally referred to vacates his office on resignation or otherwise or refuses to do works or neglecting his work or being unable to act as arbitrator for any reason whatsoever, the Mayor, BMC shall appoint another person to act as arbitrator in the place of outgoing arbitrator and the person so appointed shall be entitled to proceed further with the reference from the stage at which it was left by the predecessor. The CONTRACTOR will have no objection in any such appointment that arbitrator so appointed is employee of BMC. The adjudication of such arbitrator shall be governed by the provision of the ARBITRATION and CONCILIATION Act, 1996' or any statutory modification or reenactment thereof or any rules made thereof. The arbitration shall be held in Kolkata.”

It is not in dispute that the applicant has invoked the arbitration clause by serving appropriate notice and thereafter, has come to this Court.

Counsel for both parties have jointly made a prayer for appointment of the arbitrator to resolve the dispute.

Learned counsel for the applicant has submitted that in a dispute has arisen between the applicant and the sub-contractor relating to the same contract, Hon'ble Justice K. R. Udayabhanu (Retd.) has already been appointed as arbitrator and many of the issues involved in that case are common, therefore, in order to avoid conflicting awards, same Arbitrator be appointed in this AP also. Only reservation expressed by learned counsel for the respondent is that the seat of the arbitration should be at Kolkata though the venue may be at any other place.

Having regard to the aforesaid submissions and undisputed arbitration clause, AP is allowed. Justice K. R. Udayabhanu is appointed as Arbitrator to resolve the dispute between the parties. It is made clear that the seat of arbitration will be at Kolkata, but the Arbitrator will be free to choose the place of holding proceedings in accordance with law.

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.

The counsel for the respondent has denied the factual averments.

(PRAKASH SHRIVASTAVA, C.J.)