

ODC-22

ORDER SHEET

AP/244/2022

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

NEW EUREKA TRAVELS CLUB
VS
SOUTH BENGAL STATE TRANSPORT CORPORATION

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : 17th May, 2022

Appearance:

Mr. Rohit Das, Adv.

Mr. Indradip Das, Adv.

Mr. Kishwar Rahman, Adv.

Mr. Preetam Majumdar, Adv.

Mr. Pranit Biswas, Adv.

Mr. Ayan Banerjee, Adv.

Ms. Debasree Dhamali, Adv.

Ms. Riya Ghosh, Adv.

The Court: This is a Section 11 application wherein the arbitration clause reads as under:-

“15) All disputes, difference, or question which may at any time arising out between the parties hereto claiming under them or interpretation of the clauses in respect of this agreement or breach of any terms thereof or of compensation payable thereof or difference arises between the parties which cannot be mutually resolved shall in any manner whatsoever in connection with it or the subject matter thereof shall be referred to the Managing Director of SBSTC for his decision. If any party is dissatisfied with the decision of the Managing Director, such aggrieved party may request the Chairman of SBSTC to appoint a sole

arbitrator. Appointment of arbitrator may be done by the Chairman of SBSTC under the provisions of the Arbitration & Conciliation Act, 1996 for the time being in force shall be applicable to such reference.

16) During execution of this job, if any dispute arises thereby, the necessary legal matters and/or court case shall be exclusively within the jurisdiction of the Courts of Calcutta.”

In the Section 21 notice issued by the petitioner, the petitioner had submitted that the arbitrator is required to be decided by the Court as the Supreme Court has held that an interested party cannot nominate an arbitrator. Subsequent to the Section 21 notice, the respondent had given a choice of three learned Advocates of this Hon’ble High Court to be chosen by the petitioner for appointment as sole arbitrator. The petitioner not being agreeable to the same has filed a Section 11 application for appointment of an independent arbitrator to be decided by this Court.

Upon examination of the judgments in ***TRF Limited v. Energo Engineering Projects Ltd.*** reported in (2017) 8 SCC 377, ***Perkins Eastman Architects v. HSCC (India) Limited*** reported in (2019) 9 SCC Online SC 1517 and in ***Central Organisation for Railways Electrification v. ECI-SPIC-SMO-MCML (JV) A Joint Venture Company*** cited by the parties, it is clear that neither an interested party can be appointed as an arbitrator nor can the said interested party appoint an arbitrator to decide the disputes between the parties. The judgments in ***TRF Limited (Supra)*** and ***Perkins Eastman Architects (Supra)*** have settled the law on this point.

After considering the decision of the Supreme Court in ***TRF Limited (Supra)***, the Supreme Court in ***Perkins Eastman Architects (Supra)*** held as follows:-

“20. ...If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in *TRF Limited*, all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an Arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an Arbitrator.”

The judgment of the Supreme Court in ***Central Organisation for Railways Electrification (Supra)*** is distinguishable to the present facts and circumstances. It is to be noted that the Supreme Court in the above judgment had held that the conditions in the agreement between the parties had required appointment of a panel of three arbitrators and the High Court had erred in appointing an independent sole arbitrator ignoring the agreement between the parties and, accordingly, the Supreme Court had quashed such appointment.

The present situation is different as a sole arbitrator is required to be appointed as per the parties and under such circumstances the law is very clear that it is the Court that is to decide the sole arbitrator. The persons that have been nominated by the respondent cannot be accepted and this Court without going into the merits of the persons so nominated, should appoint an independent sole arbitrator.

Accordingly, Mr. Pradip Kumar Ghosh, Senior Advocate (Mob. No.9007711691) 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/244/2022 is accordingly disposed of.

(SHEKHAR B. SARAF, J.)