

AP/494/2021

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

INDWELL CONSTRUCTIONS PRIVATE LIMITED
VERSUS
BHARAT HEAVY ELECTRICALS LIMITED (BHEL)

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 8TH MARCH, 2022

APPEARANCE:

Mr. Chayan Gupta, Advocate
Mr. Sudip Pal Choudhuri, Advocate
..... for the petitioner.

The Court:- Affidavit of service filed by the applicant is taken on record. Though respondent is served, but no one is present to oppose this application.

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

The learned counsel for the applicant has pointed out that in pursuance to the NIT dated 25th April, 2011, Work Order was issued in favour of the applicant by the respondent on 2.11.2011 which contains the following arbitration clause:

“2.21 **ARBIRATON & RECONCILIATION**

2.21.1 In case amicable settlement is not reached in the event of any dispute or difference arising out of the execution of the Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision of the Contractor in any manner touching upon the Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided

for therein) be referred to the sole arbitration of the arbitrator appointed by BHEL/In charge (region).

The award of the Arbitrator shall be binding upon the parties to the dispute.

Subject to aforesaid, the provisions of Arbitration and Reconciliation Act, 1996 (India) or statutory modifications or reenactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine.”

He has further submitted that on account of certain deductions made from the bill of the applicant, a dispute has arisen, therefore, the applicant had sent the notice dated 31.10.2020 invoking the arbitration clause and suggesting the names of the Arbitrator for appointment to resolve the dispute but no response to the said notice was received.

No one is present for the respondent despite service of notice to dispute the above contention and therefore, the arbitration agreement has remained undisputed. Considering the submission of the counsel for the applicant and the fact that arbitration agreement exists between the parties and the notice invoking arbitration clause has been given and that the dispute also exists, I am of the opinion that a case is made out for allowing the prayer for appointment of arbitrator in terms of Section 11 of the Act to resolve the dispute between the parties.

Accordingly, Mani Shankar Dwivedi, retired District Judge, is appointed 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 is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)

sm/akg