

AP/289/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

PEST CONTROL MANAGEMENT PRIVATE LIMITED AND ANR.
VERSUS
UNION OF INDIA AND ANR.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 17th June, 2022

APPEARANCE:

Mr. Somnath Saha, Advocate
Mr. Ujjwal Jana, Advocate
.....for the petitioners.

Mr. Sanajit Kumar Ghosh, Advocate
.....for respondents.

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointment of the independent arbitrator to resolve the dispute between the parties.

The agreement dated 7th February 2013 for licensing of the contract for two-wheeler, car and luxury bus parking stand at Howrah Railway Station premises is not in dispute. The said undisputed agreement contains following arbitration clause:

“26. All disputes, questions or differences arising out of or in any way touching or concerning this agreement (except those the decision whereof is otherwise here in force specifically provided for) shall be referred to the sole arbitrator of any person appointed by the Principal Chief Commercial Manager, Eastern Railway at the time of such appointment. There will be no objection to any such appointment that the person appointed is a government servant, that he has to deal with the matters to which the agreement relates and that in the course of his duties as such Government servant he had expressed the views on all or any of the matters in dispute or difference. The award of such arbitrator shall be final and binding on the parties to the agreement. It is a term of this agreement that in the event of such arbitrator to whom the matter is originally referred being transferred or vacating this office or being unable to act for any reason such Principal Chief Commercial Manager, Eastern

Railway as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as Arbitrator. In accordance with terms of this agreement, such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this agreement that no person other than a person appointed by the Principal Chief Commercial Manager, Eastern Railway as aforesaid should act as Arbitrator and if for any reason that it is not possible the matter is not to be referred to arbitration at all. Subject as aforesaid, the provision of the Arbitration Act, 1996 or any statutory modification or reenactment thereof and the rules made thereunder from time to time shall apply to such arbitration. The Arbitrator may with the consent of the parties extend from time to time, the tenure for making and publishing the award. The venue of Arbitration shall be Eastern Railway, Kolkata.”

It has also been submitted by learned counsel for the applicants that since the dispute had arisen, therefore, the applicants had sent the notice dated 4th April 2022 invoking the arbitration clause with a prayer to appoint an arbitrator to resolve the dispute between the parties. Though the notice was served, but no reply was sent by the respondents.

Learned counsel for the respondents has raised the sole contention before this Court that the resolution of dispute through the private arbitrator will be a costly process, therefore, the dispute should be decided by the Railway authority in terms of the aforesaid arbitration clause.

In terms of the above arbitration clause, arbitrator is to be appointed by the Principal Chief Commercial Manager, which is not permissible in view of Section 12(5) of the Arbitration and Conciliation Act, 1996 as also the judgment of the Supreme Court in the matter of Perkins Eastman Architects DPC And Another versus HSCC (India) Limited [(2020) 20 SCC 760], wherein it has been laid down that an officer or an authority having interest in the dispute is disentitled to make appointment of an arbitrator.

Having regard to the aforesaid, I am of the opinion that a case for appointment of an independent sole arbitrator to resolve the dispute has been made out.

Accordingly, Justice Dr. Sambuddha Chakraborti, a retired judge of this Court is appointed 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 within four weeks. Registrar, Original Side is directed to communicate this order to the Learned Arbitrator forthwith.

AP is, accordingly, disposed of.

(PRAKASH SHRIVASTAVA, C.J.)

sm/s.kumar