

AP/359/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

POWER MECH PROJECTS LIMITED
VERSUS
BHARAT HEAVY ELECTRICALS LTD.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 1st July, 2022

APPEARANCE:

Mr. Ramesh Ch. Prusti, Advocate
Mr. Sanjib Das, Advocate
Mr. Binay Kr. Upadhyay, Advocate
Ms. Mahuya Ghosh, Advocate
.....for applicant.

The Court:- The affidavit of service filed by the applicant discloses that the respondent is duly served. Yet, no one is present for the respondent.

Learned counsel for the applicant has pointed out that the contract was entered into between the parties and the work order dated 10.05.2019 was issued by the respondent in favour of the present applicant and the same contains the following arbitration clause:-

"36.0 ARBITRATION

- 36.1 If any dispute or differences of any kind whatsoever shall arise between BHEL and you, arising out of the contract for the performance of the work whether during the progress of termination, abandonment or breach of the contract, it shall in the first place be referred to and settled by the Designated Engineer (nominated by BHEL for settlement of the disputes arising out of this contract) who within a reasonable period after being requested shall give written notice of his decision to you. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by you who shall proceed with the work with all due diligence, whether he or BHEL required arbitration as hereinafter provided or not.*
- 36.2 If after the Designated Engineer has given written notice of this decision to the party, no claim to arbitration has been communicated to him by the party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event you being dissatisfied with any such decision or if amicable*

settlement can not be reached then all such dispute issues shall be referred to the sole arbitration of the person appointed by BHEL.

- 36.3 *Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute of difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then either Party may, by a notice in writing to the other Party refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Power Sector Region issuing the Contract. It shall not be open to you to object to such arbitrator only on the ground that such arbitrator is an employee/ex-employee of BHEL or has dealt with or has expressed any opinion on any issue touching upon the Contract.*

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be Kolkata (the place from where the contract is issued).

- 36.4 *The cost of arbitration shall be borne equally by the Parties.*

- 36.5 *Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, you shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner.”*

He has also pointed that in terms of the aforesaid clause, initially, the applicant had approached the designated engineer and the designated engineer had given the decision dated 23.03.2021, which was not acceptable to the applicant. Therefore, he had given the notice dated 20th April 2021 invoking the arbitration clause. Thereafter, in terms of the reply dated 20th August 2021, an attempt for amicable settlement was also made, which failed on 29th September 2021.

The above submissions have remained unopposed as the respondent has not appeared before this Court, in spite of service of notice.

Considering the above aspect of the matter, I am of the opinion that a case for allowing the prayer for appointment of an independent arbitrator to resolve the dispute between the parties is made out.

Accordingly, AP is allowed.

Justice Ranjit Kumar Bag (Mob.No.8335073594), a retired Judge of this Court, is appointed as the arbitrator to resolve the dispute between the parties.

The appointment of the arbitrator 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.

(PRAKASH SHRIVASTAVA, C.J.)

sm/s.kumar