

ORDER

OD-1

AP/521/2021

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

DEBJANI GANGULY
VERSUS
DHULAIWALA CLEAN INDIA LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 10TH MARCH, 2022

[Via Video Conference]

APPEARANCE:

Ms. Pooja Jewerajka, Advocate
Mr. Rahul Poddar, Advocate
Mr. Sayantan Das, Advocate
.....for the petitioner.

The Court:- Learned counsel for the applicant has filed the affidavit of service indicating that the respondent is served in the matter.

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

Learned counsel for the applicant has pointed out that the Franchise Agreement dated 2nd July, 2018 was entered into between the applicant and the respondent which contains the following arbitration clause:

“3. All disputes between parties shall be subject to exclusive jurisdiction of the Kolkata only.

4. Arbitration: Any and all disputes (“Disputes”) arising out of or in relation to or in connection with this Agreement between the Parties or relating to the performance or nonperformance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in Kolkata, India in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The place of arbitration shall be Delhi. The language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by the Company only. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction.”

She has also pointed out that since the dispute had arisen between the parties, therefore, applicant had given notice dated 25th November, 2020 invoking the arbitration clause and proposing the name of the arbitrator to resolve the dispute. The notice was duly served upon the respondent, which was replied by Annexure F taking the stand that only the respondent had right to appoint the arbitrator. Submission of counsel for the applicant is that only the respondent cannot have the sole right to appoint the arbitrator in terms of the arbitration clause and in support of her submission, she has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd. [2019 SCC OnLine SC 1517].

In spite of service of notice, no one is present, therefore, arbitration agreement as also the submission advanced by the counsel for the applicant have remained unrebutted.

In view of the above, I am of the opinion that a case for allowing the prayer of the applicant for appointment of arbitrator to resolve the dispute between the parties is made out. Accordingly, Mr. Saikat Banerjee, Advocate, M:9830166896 is appointed an 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.)