

AP/503/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

SEVEN STAR ENTERPRISES
VERSUS
THE PRINCIPAL CHIEF COMMERCIAL MANAGER, EASTERN RAILWAY

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 12th AUGUST, 2022

APPEARANCE:
Mr. Shubham Gupta, Advocate
Mr. Tanmoy Kr. Dey, Advocate
. . .for the applicant
Mr. Rivu Dutta, Advocate
. . . . for respondent.

The Court:- Affidavit of service filed by the applicant is taken on record.

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

Learned counsel for the applicant has pointed out that the agreement to occupy land for the purpose of composite parking stand at Bandel Railway Station was executed between the parties on 21st December, 2021 and the said agreement contains the following arbitration clause :

“26. All disputes questions or difference arising out of or in any way touching or concerning this agreement (except those the decision whereof is otherwise herein 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 an 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 there under from time to time shall apply to such arbitration. The arbitrator may with the consent of the parties extent from time to time, the tenure for making and publishing the award. The venue of Arbitration shall be Eastern Railway, Kolkata .”

He has also pointed out that since the dispute had arisen, therefore, the applicant had sent the notice dated 19th May, 2022 to the respondent invoking the arbitration clause and made a prayer to appoint the sole arbitrator, but in spite of receipt of the said notice no response was given and the arbitrator was not appointed. Hence the present application has been filed.

Learned counsel for the respondent has raised the sole objection that the notice was sent to the applicant for waiver of the applicability of Section 12(5) of the Arbitration Act, but no response to the said notice was received.

Learned counsel for the applicant has denied to receipt of any such notice.

In the circumstances of the case, I am of the opinion that a case is made out for allowing the prayer made for appointment of the sole arbitrator.

Accordingly, AP is allowed. Mr. Debjit Mukherjee, Advocate (M. No. 9674292555) of this Court is appointed as sole 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 of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)