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ORDER SHEET  
AP/653/2022  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

M/S. E.H. CONSTRUCTION COMPANY PVT. LTD.  
-VS-  
M/S. SHYAMA PRASAD MOOKERJEE PORT

BEFORE:  
HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA  
DATE: 23<sup>RD</sup> SEPTEMBER 2022.

APPEARANCE:  
Mr. A. Hussain, Adv.; Ms. L. Pan, Adv.; for petitioner.  
Mr. S. Nag, Adv.; Mr. S. Bose, Adv., for respondent.

THE COURT: This is an application under section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act").

Learned counsel appearing for the petitioner has pointed out that in response to the NIT dated 30<sup>th</sup> September, 2019, the applicant had submitted the bid and was awarded the contract on 12<sup>th</sup> March, 2020. He further submits that the applicant had commenced the work in pursuance to the contract, but on account of Covid-19 pandemic, the contract was terminated. He has pointed out the following arbitration clause in terms of the contract:

“10.3 If, however, the Contractor be still dissatisfied with the decision of the Chairman, he shall within 15 days after receiving notice of such decision require that within 60 days from his written notice, the Chairman shall refer the matter to an Arbitrator of the panel of Arbitrators to be maintained by the Trustees for the purpose and any such reference shall be deemed to be a submission to arbitration within the meaning of Indian Arbitration Act, 1940 or any statutory modification thereof.”

He has also pointed out that invoking the arbitration clause, the applicant had sent the notice dated 15<sup>th</sup> June, 2022 with the prayer to refer the dispute to arbitration in terms of the contract and the applicable clause. The respondent had subsequently, by reply dated 20<sup>th</sup> June, 2022, had sent response to the applicant's earlier notice dated 28<sup>th</sup> April, 2022 with the request to the Chief engineer for settling the dispute.

Learned counsel for the respondent has not disputed the arbitration agreement but his only submission is that the Arbitrator is to be appointed from the panel of Arbitrators in terms of the arbitration clause.

Since the respondent has not acted upon the request of the applicant to appoint the Arbitrator in terms of the arbitration clause and the present AP has thereafter been filed, therefore such a prayer of the respondent at this stage cannot be accepted.

Counsel for the applicant also made a prayer for appointment of a retired Judge/Judicial Officer for resolving the disputes between the parties.

Hence, considering the submission of the parties, the AP is allowed.

Justice Alok Chakraborti, a retired Judge of this Court (Mob. No.9836268263), is appointed as sole Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the sole 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.

A.P. No.653 of 2022 accordingly stands disposed of.

(PRAKASH SHRIVASTAVA, CJ)

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