

AP/657/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONGAINWELL COMMOSALES PRIVATE LIMITED, (FORMERLY
KNOWN AS TRACTORS INDIA PRIVATE LIMITED).
VERSUS
GAYATRI PROJECTS LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 18th November, 2022.

APPEARANCE:

Mr. Soumabho Ghose, Advocate
Mr. Soumalya Ganguli, Advocate
Ms. Tiana Bhattacharya, Advocate
..... for the applicant.

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

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 submitted that the Arbitration Agreement in the form of Work Order dated 16th May, 2018 exists between the parties and in this regard, he has referred to the following clause of Work Order :

“t) ***Jurisdiction*** – Any dispute & discrepancy in relation to this contract / agreement shall be discussed & resolved mutually basis at site only, otherwise arbitration venue to be the honorable Court Delhi/Kolkata/Banaras/Hyderabad.”

He has also submitted that for payment of hiring charges, tax invoices were issued by the respondent and the invoice in question being dated 30th August, 2019 contained the following arbitration clause:

“7. All disputes are subject to Kolkata jurisdiction and are to be referred to Arbitrator.”

He has also submitted that since the dispute had arisen between the parties as the payment was not made to the applicant, therefore, invoking the arbitration clause, the applicant had served the notice dated 9th March, 2022 upon the respondent in terms of Section 21 of the Act. In spite of receipt of the notice, no reply was given by the respondent.

Before this Court also no one has appeared for the respondent, in spite of service of notice.

In the above circumstances, the arbitration clause, service of notice under Section 21 of the Act and existence of the dispute between the parties have remained uncontested. Therefore, I am of the opinion that a case is made out for allowing the prayer for appointment of sole arbitrator to resolve the dispute between the parties.

Accordingly, AP is allowed and Mr. Jayjit Ganguly, Advocate of this Court, is appointed as sole arbitrator to resolve the dispute between the parties, 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.

(PRAKASH SHRIVASTAVA, C.J.)