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ORDER SHEET
AP/674/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

M/S. GAINWELL COMMOSALES PRIVATE LIMITED
-VS-
GUPTA AND COMPANY DEVELOPERS PRIVATE LIMITED

BEFORE:
HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE: 23RD SEPTEMBER 2022.

APPEARANCE:
Mr. S. Ganguly, Adv.; for petitioner.
Mr. S. Mukherjee, Adv.; Mr. R. Agarwal, Adv. for respondent.

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

The case of the applicant is that in or about August 2018, the respondent had approached the applicant for purchasing the spare parts for caterpillar equipment for its project and obtaining the services of the applicant for overhauling of a CAT make C6.4 engine. The negotiations took place and thereafter the purchase order dated August 23, 2018 was issued and supplies were made.

On the basis of the request of the respondent, invoice no.SV1900002795 and invoice no.SV1900002797 and some more invoices were issued and despite repeated reminders initially, the respondent had failed to make the payment and finally had issued two cheques dated

October 25, 2018 for a sum of Rs.17,46,650/- and dated December 11, 2018 for a sum of Rs.17,343/-. But the same were dishonoured.

Hence, invoking the arbitration clause, the applicant had served upon the respondent a notice dated 25th July, 2022 which was replied by the respondent on August 3, 2022, disputing the existence of the arbitration agreement.

The invoices in question contain the following arbitration clause:

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

Learned counsel for the respondent has orally disputed the arbitration agreement contained in the aforesaid invoices by submitting that no formal arbitration agreement was executed between the parties and the invoices were not accepted by the respondent.

The records reflect that the invoices mentioned above contain the arbitration clause and in the communication dated September 15, 2019, the respondent had admitted the receipt of those two invoices and acting upon the same had also sent the cheques towards payment which were later dishonoured. Receipt of those invoices has also been admitted by the respondent in the reply dated August 3, 2022.

Hence, in terms of section 7 of the Act, the arbitration agreement exists between the parties.

Since the dispute has arisen between the parties, therefore, I am of the opinion that a case for appointment of Arbitrator is made out.

Accordingly, the AP is allowed.

Mr. Rishad Medora, Advocate, (Mob. No.9830319654), 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.674 of 2022 accordingly stands disposed of.

(PRAKASH SHRIVASTAVA, CJ)

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