

AP/702/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

JOTUN INDIA PRIVATE LIMITED
VERSUS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 8TH DECEMBER, 2022.

APPEARANCE:

Mr. Rishad Medora, Advocate
Ms. Sarada Hariharan, Advocate
...for applicant

Mr. Snehashis Sen, Advocate
Mr. Abhishek Banerjee, Advocate
..for respondent

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

Learned counsel for the applicant has pointed out the Purchase Order dated 5th November, 2018 issued by the respondent in favour of the applicant containing the following arbitration clause:

“24. *Dispute Resolution, Governing Laws and Jurisdiction:*

- a) In the event of any dispute or difference arising out of and in connection with the Purchase Order, such disputes shall be firstly attempted to be settled by mutual discussions. In case of failure of the parties to reach to an amicable settlement within 30 days from the date of referring the dispute for mutual discussion, the disputes will be referred to arbitration.*
- b) On failure of amicable settlement as mentioned in sub clause (a) of this clause, the dispute or differences shall thereafter be settled under the Arbitration and Conciliation Act, 1996 as amended from time to time by a sole arbitrator appointed by the Company Secretary (CS) of the Purchaser. The venue of arbitration shall be Kolkata, India and the language of*

the arbitration shall be English. The award of the arbitrator will be final and binding upon the parties. The Hon'ble Courts at Calcutta will have the exclusive jurisdiction to adjudicate all matters arising out of the Purchase Order."

He has also submitted that though the steps were taken by the applicant in pursuance of the Purchase Order, but payments were not made, therefore, invoking the arbitration clause, the applicant had sent the notice dated 22nd June, 2022 in terms of Section 21 of the Act which was duly served upon the respondent but no reply was given.

Learned counsel for the respondent has not disputed the arbitration clause and service of notice but has submitted that the amount, which the applicant is claiming, is on the higher side and is in dispute. Such a dispute can be decided by the arbitrator.

In the above circumstances, the arbitration agreement, service of notice under Section 21 of the Act as also 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 arbitrator to resolve the dispute between the parties. Accordingly, AP is allowed and Mr. Sanjeeb Seni, (Mob.9830027669), Advocate of this Court is appointed as arbitrator, 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.)