

AP/708/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONMADHAV KRG LIMITED
VERSUS
TITAGARH WAGONS LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 8TH DECEMBER, 2022APPEARANCE:
Ms. Malvica Satita, Advocate
Mr. Sarthak Sawhney, Advocate
Ms. Saheli Bose, Advocate
....for the petitioner
Mr. Sayantan Bose, Advocate
Ms. Madhurima Das, Advocate
...for the respondent

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

Learned counsel for the respondent has not disputed that the arbitration agreement dated 22nd October, 2020 exists between the parties which contains the following clause relating to the arbitration.

"6.6 Governing Law, Jurisdiction and Arbitration

This Agreement shall be governed by and construed in accordance with the laws of India. Any disputes arising pursuant to, out of or under this Agreement shall be at first settled by amicable discussions within 30 days failing which such disputes may be adjudicated by the sole Arbitrator (MD of Matexnet) in accordance with Arbitration & Conciliation Act, 1996 as amended. Seat of arbitration shall be Kolkata, Courts at Kolkata shall have exclusive jurisdiction. The language shall be in English."

It is also not in dispute that the applicant had served the notice dated 8.6.2022 in terms of Section 21 of the Act. Since the dispute had arisen between the parties, the applicant had approached this Court.

The stand of the counsel for both the parties is that the sole Arbitrator, MD of Matexnet mentioned in the arbitration clause has interest in the matter, therefore, he cannot be permitted to arbitrate the dispute.

It has also been pointed out that a suit was filed by the respondent in which the applicant had filed an application under Section 8 of the Act and the Trial Court by order dated 29th November, 2022 had reached to the conclusion that the parties had entered into the arbitration agreement and the dispute was covered by the arbitration clause, therefore, had returned the plaint.

Having regard to the aforesaid, I am of the opinion that a case has been made out for allowing the prayer for appointment of the sole arbitrator to resolve the dispute between the parties.

Accordingly, the AP is allowed. Justice Ashoke Kumar Dasadhikari, (9051024638) a retired Judge of this Court is appointed as Arbitrator to resolve the disputes 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.)