

AP/791/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONROHIT TYAGI
VERSUS
THE BOARD OF SHYAMA PRASAD MOOKERJEE PORTBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 15TH DECEMBER, 2022.

APPEARANCE:

Mr. N. K. Chowdhury, Advocate
Mr. Jayanta Sengupta, Advocate
Mr. Nilotpall Chowdhury, Advocate
Mr. Deepak Sharma, Advocate
.....for the applicant.

Mr. Subhankar Nag, Advocate
Mr. Santosh Kr. Roy, Advocate
Ms. Sannoyee Chakraborty, Advocate
Ms. Antalina Guha, Advocate
..for respondents

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.

The Arbitration Agreement is not in dispute which contains the following arbitration clause:-

- “10.0 *INTERPRETATION OF CONTRACT DOCUMENTS, DISPUTES AND ARBITRATION*
- 10.1 *In all disputes, matters, claims, demands or questions arising out of or connected with the interpretation of the Contract including the meaning of Specifications, drawings, designs and instructions or as to the quality of workmanship or as to the materials used in the work or the execution of the work whether during the progress of the works or after the completion and whether before or after the determination, abandonment or breach of the contract the decision of the Engineer shall be final and binding on all parties to the contract and shall forthwith be given effect to by the Contractor.*
- 10.2 *If the Contractor be dissatisfied with any such decision of the Engineer, he shall within 15 days after receiving notice of such decision require that the matter shall be referred to Chairman, who shall thereupon consider and give a decision.*

- 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."*

Learned counsel for the applicant has pointed out that the contract was terminated by the Chief Engineer by order dated 28th June 2021, therefore, the dispute had arisen between the parties. He has also pointed out that since the NIT was issued by the Chief Engineer, therefore, in terms of Definitions clause 1.4, the Chief Engineer is covered within the meaning of 'Engineer'. He has also pointed out that after the termination of the contract, notice dated 12th July 2021 was sent by the applicant to the Chief Engineer questioning the termination with a prayer for revocation of the termination. He has submitted that this was a notice in terms of clause 10.1 of the arbitration clause. He has also pointed out the notice dated 24th July 2021 sent by the applicant to the Chairman with a request to revoke the termination and make payment of the balance amount within 15 days, failing which the applicant would be compelled to initiate appropriate legal action in the matter. He has also pointed out that in terms of clause 10.3 of the arbitration clause, applicant had sent the notice dated 17th August 2021 to the Chairman with a request to refer the dispute to the Arbitrator. The Chief Engineer vide communication dated 26th November 2021 had refused the prayer stating that the dispute is not arbitrable. In view of the above communications which have been pointed by counsel for the applicant, I am of the opinion that the objection by the respondent that the procedure prescribed in arbitration clause 10 has not been complied with, cannot be sustained.

Thus, 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. Utpal Bose, a senior advocate of this Court, is appointed as sole 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.)