

Form No. J.(2)
Item No.6
Court No.1
Pallab/K.S.
A.R (Court)

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 17.08.2023

DELIVERED ON: 17.08.2023

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 1299 of 2023
With
I.A. No. CAN 1 of 2023**

**Harji Engineering Works Pvt. Ltd.
Vs.
Union of India & Anr.**

Appearance:-

**Mr. Sirsanya Bandyopadhyay
Ms. Deboleena Ghosh**for the appellant

Mr. Saurik Nandyfor the Union of India

**Mr. Rohit Das
Ms. Kishwar Rahman
Mr. Indradip Das
Ms. Sristi Roy**for the respondent no.2

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 6th July, 2023 in W.P.A. 12900 of 2023. In the said writ petition, the appellant had challenged the action of the 2nd respondent in

floating a new tender with regard to the subject work through 'Risk and Cost' of the petitioner/appellant, who was initially awarded the tender, which stood terminated consequently. As against the order of termination, the appellant has rightly invoked the arbitration clause and notices have also been issued and the appellant has also moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, "the Act") before the learned single Bench of this Court. We are informed by the learned advocate appearing for the appellant that the arguments have been heard by the learned single Bench and orders have been reserved.

2. The learned advocate appearing for the 2nd respondent/tendering authority submits that in the said application filed under Section 9 of the Act, an order of *status quo* has been granted and the 2nd respondent has questioned the jurisdiction of the learned single Bench of this Court to entertain the application filed under Section 9 of the Act and the appropriate forum would be the Commercial Court at Rajarhat and not before this Court.
3. The learned advocate appearing for the 2nd respondent submitted that the new tender floated has been finalised and a third party has been awarded the work.
4. The proceedings, which were impugned in the writ petition are consequence upon the termination of the contract awarded to the appellant. We say so because upon termination of the contract, the 2nd respondent has floated a new tender subject to the 'Risk and Cost' of the appellant. Thus, the new tender having been floated is in effect a consequential action upon termination of the contract awarded to the appellant at the first instance.

Therefore, the arbitration clause, which is available in the tender document will equally apply to the challenge to the fresh tender, which has been floated at the risk and cost of the appellant. Therefore, the appellant should invoke the provisions of the Act and a writ petition questioning the correctness of the same cannot be entertained.

5. In the light of the fact that already arguments have been heard and orders have been reserved in the application filed by the appellant under Section 9 of the Act, the appellant is at liberty to file a fresh application under Section 9 since according to the appellant floating of a new tender at the risk and cost of the appellant gives it a fresh cause of action. Liberty sought for is granted.
6. We make it clear that the observations/findings rendered by the learned writ Court in the impugned order dated 6th July, 2023 will not in any manner prejudice the appellant from canvassing all grounds, both factual and legal in the proceedings, which it proposes to initiate under Section 9 of the Act.
7. With the above observations, the appeal along with the connected application are disposed of.
8. No costs.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)