

22nd August, 2023
Ct. 1
D/L 1
(sg)

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.O. 61 of 2023

M/s. Divya Shakti Construction And Anr.

Versus

Superintending Engineer, Government of
West Bengal And Ors.

Mr. Rohit Banerjee
Mr. Hillol Saha Poddar
Ms. Mousumi Das

... for the petitioners.

Mr. Joyjit Choudhury, Ld. A.A.G.,
Mr. Subir Kr. Saha, Ld. A.G.P.

... for the State.

Mr. Sudipto Kr. Majumder, Ld. DSGI
Mr. Ajoy Kr. Singhanian
Mr. Sourab Kar

.....for the respondent nos.4 & 5

The existence of a dispute between the parties is evident from the material on record as also by the submissions made on behalf of the learned counsel appearing for the petitioners and the learned A.A.G. appearing on behalf of the respondents.

The arbitration clause is contained in a Standard Bidding Document (Procurement of Civil Works), issued by the Government of India, Ministry of Surface Transport. The document consists of an e-Notice Inviting Bids by the Government of West Bengal for construction of a part of a

National Highway from Matigara, Siliguri to Darjeeling. The petitioners allegedly faced several difficulties in completing the work within the agreed period of time including for disputes on the line, strikes and the pandemic. The respondents did not accede to the petitioners' prayer for extension of time and finally terminated the contract on 30th August, 2022. The petitioners issued a notice under Section 21 of the 1996 Act invoking the arbitration agreement and the respondents replied on 24th May, 2023 responding to the petitioners' choice of the Arbitrator and stating that the agreement envisages three Arbitrators.

Previous orders passed by the Co-ordinate Benches show that the petitioners were initially not agreeable to a Tribunal of three Arbitrators. The petitioners now through learned Counsel, however, agrees that a three-member Tribunal may be constituted to resolve the disputes and differences between the parties. The respondents' choice of one of the Arbitrators, who is an ex-employee of the respondents, however, falls under the prohibition of Section 12(5) of the 1996 Act read with the Fifth and Seventh Schedules thereto.

There is admittedly a dispute which needs to be resolved and the parties have hence come to the Court for that resolution under Section 11(6)(a) of the 1996 Act.

The Court had called for a report from the learned Registrar, IT, Principal Bench as to the nomenclature of the present application, which should have been an Arbitration Petition.

The report states that the Circuit Bench of Jalpaiguri does not have the required mechanism to use 'AP' since matters in the Original Side are not usually filed in the Circuit Bench at Jalpaiguri. The Court thereafter was informed that the matter may be heard and disposed of in the present form/nomenclature.

CO No. 61 of 2023 is accordingly allowed and disposed of by nominating an Arbitral Tribunal of three members.

The Arbitral Tribunal appointed shall consist of Niloy Chakraborty and Bikramaditya Ghosh, learned counsel. The presiding Arbitrator shall be Kesong Doma Bhutia, a former Judge of the Calcutta High Court.

The learned Arbitrators shall communicate their consent in the prescribed format to the Registrar of the Circuit Bench at Jalpaiguri within three weeks from today. The

advocate-on-record of the petitioners shall communicate this order on the learned Arbitrators by 24th August, 2023 along with the contact information of the relevant person.

As requested by learned counsel appearing for the parties, the remuneration of the learned Arbitrators shall be in accordance with the Fourth Schedule to the 1996 Act.

(MOUSHUMI BHATTACHARYA, J.)