

OD-14

AP/10/2021
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

PECON SOFTWARE LIMITED
VERSUS
WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 19th July, 2023.

Appearance:
Mr. Om Narayan Rai, Adv.
Mr. Piyas Chowdhury, Adv.

Mr. Puspall Chakraborty, Adv.
...for the respondent

The Court:- This is an application for appointment of an Arbitrator under Section 11(6) of the 1996 Act.

The only claim of the petitioner is for reimbursement of GST. It is undisputed that the petitioner and the respondent entered into a contractual relationship on 29th May, 2015 for, *inter alia*, deployment of manpower to the respondent WBSEDCL. This Agreement contains an arbitration clause at Clause 5.0. The Clause provides at Clause 5.1 that the parties will first attempt to settle the dispute through a meeting between WBSEDCL and the contracting agency (petitioner) at the appropriate level. The parties did try to exhaust this route through a High-Powered Committee (HPC) of the WBSEDCL.

The Committee after considering the contesting positions, rejected the petitioner's claim for GST. The decision is of 13th October, 2020.

The petitioner had earlier raised demands on the respondent for its claim including on 27th November, 2017 and 25th June, 2018. The petitioner also invoked the arbitration clause by a notice under Section 21 of the Act on 26th May, 2019. The entire issue thereafter went to the HPC for a decision. The fact of rejection dated 13th October, 2020 has already been stated above.

Learned counsel appearing for the respondent WBSEDCL seeks to oppose appointment of an Arbitrator on two grounds. First, that the rejection of the High-Powered Committee is based on a notification of the Finance Department of the Government of West Bengal dated 16th August, 2017 and second, that the dispute pertains to a policy decision taken by the Government of West Bengal.

The grounds for resisting appointment of an Arbitrator are not acceptable since there is admittedly an agreement between the parties which contains an arbitration clause. The parties gave effect to Clause 5.1 of the Arbitration Agreement by going before the HPC. Hence, the parties exhausted the first requirement under Clause 5.0 of the Agreement. The remaining part of the Clause relates to arbitration. The petitioner has already invoked the arbitration clause and the respondent has not replied to the Section 21 notice. The respondent instead referred the matter to the HPC.

There is little doubt that the parties disagree to the dispute resolution mechanism provided under the Agreement; that there is an agreement and more

important that there is a dispute between the parties. The parties would hence under Section 11(6)(a) of the 1996 Act.

The contention with regard to whether the Notification of the State Government dated 16th August, 2017 would apply to the facts of the present case is a matter of interpretation of the Notification. This is entirely within the domain of the Arbitrator.

This Court is further of the view that the ground of a policy decision, even if acceptable, would take backseat in a section 11 application where there is an agreement and dispute between the parties.

AP/10/2021 is, accordingly, allowed and disposed of by appointing Mr. Snehasish Chakraborty, Advocate to act as the Arbitrator, subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court. The petitioner shall communicate this order to the Arbitrator by 21st July, 2023 with particulars of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)