

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/14/2021

PAHARPUR COOLING TOWERS LTD
VS
BHARAT HEAVY ELECTRICALS LTD

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : December 11, 2023.

Appearance:

Mr. Anirban Ray, Adv.

Mr. Debraj Sahu, Adv.

Mr. Snehashis Sen, Adv.

...for the petitioner

Mr. Aniruddha Bhattacharya, Adv.

Mr. Arnab Roy, Adv.

...for the respondent

The Court:- Although this is an application for appointment of an Arbitrator under Section 11 of the 1996 Act, the parties are now agreed to treat the application as one for substitution. Learned counsel appearing for the parties accordingly request the Court to substitute the erstwhile learned Arbitrator and appoint a new Arbitrator.

The erstwhile learned Arbitrator was appointed on 31st December, 2015 and is a retired General Manager of the respondent. The petitioner thereafter filed an application under Section 11(6) which was rejected by the Court on 14th December, 2017. The petitioner lodged its claim thereafter with the respondent on 8th June, 2018 and the respondent rejected the revised claim on 12th June, 2020. The present application was filed in January, 2021.

The petitioner had always objected to the respondent's unilateral appointment of the learned erstwhile Arbitrator. The law is too well-settled in this respect. Therefore, there is no room for any doubt on this aspect.

Section 15(1)(b) of the 1996 Act is a rolled-up provision for termination of mandate of an Arbitrator as well as substitution of the erstwhile Arbitrator. The parties may hence be treated as being covered by this provision.

Learned counsel appearing for the respondent also points out that the learned erstwhile sole Arbitrator had expressed his unwillingness to continue with the arbitration.

Since parties are *ad idem* on a new Arbitrator being appointed including the choice of arbitrator, AP/14/2021 is allowed and disposed of by appointing Mr. Subhro Kamal Mukherjee, former Chief Justice of the Karnataka High Court 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 within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 13th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)