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

AP/28/2023

WEST BENGAL POWER DEVELOPMENT CORPORATION LTD
VS
SICAL MINING LTD

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 1st May, 2023

Appearance:
Mr. A. Mitra, Sr. Adv.
Mr. C. Gupta, Adv.
Mr. S. Dasgupta, Adv.
Mr. S. Siddiqui, Adv.
...for the petitioner

Mr., Rohit Das, Adv.
Ms. K. Rahman, Adv.
Mr. P. Majumdar, Adv.
...for the respondent

The Court:- Affidavit-in-opposition and affidavit-in-reply filed in Court today be kept on record.

The petitioner had previously appointed an arbitrator, who was subsequently removed under Section 14 of the Arbitration and Conciliation Act, 1996 at the behest of the respondent. Upon a subsequent application under Section 11 of the 1996 Act having been filed, the petitioner had been directed to return after compliance of Section 21 of the said Act. Thereafter, such compliance has been effected and the present application has been taken out for appointment of an arbitrator in view of the arbitrator having not been settled or agreed to between the parties.

Learned counsel appearing for the respondent opposes the prayer for reference to arbitration on the ground that the agreement containing the arbitration clause itself has been wiped out by operation of the clauses of the resolution plan entered into in connection with the matter.

Such argument is, of course, refuted by learned senior counsel appearing for the petitioner.

Be that as it may, since the issue is definitely arguable and falls within the purview of the arbitration clause, the dispute sought to be raised by the respondent enters into the domain of arguability. As such, it would not be prudent to be adjudicated within the limited jurisdiction of this Court under the contemplation of Section 11 (6A) of the 1996 Act. Accordingly, the said question is required to be left open for being decided by the arbitrator along with other issue involved.

Hence, AP/28/2023 is allowed, thereby appointing Justice Jyotirmoy Bhattacharya (Contact No.: 033 2441 3509, Mobile No.: 9830929738), a former Chief Justice of this Court, as the sole arbitrator to resolve the disputes between the parties, subject to obtaining his declaration/consent under Section 12 of the Arbitration and Conciliation Act, 1996.

It is reiterated that all issues, including the issue as regards whether the agreement itself has been wiped out by operation of the resolution plan, are kept open for being decided by the arbitrator.

(SABYASACHI BHATTACHARYYA, J.)

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