

OD-6

ORDER SHEET

AP/96/2021

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

LUDLOW JUTE AND SPECIALITIES LTD
VS
UTTAR PRADESH CO OPERATIVE SUGAR FACTORY FEDERATION LTD

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th October, 2023

Appearance:

Mr. Pranit Bag, Bar-at-Law

Mr. Anuj Mishra, Adv.

Mr. Balaram Patra, Adv.

...for the petitioner

Mr. Krishnapada Pal, Adv.

Mr. K.K. Pathak, Adv.

Mr. Souvik Maji, Adv.

...for the respondent

The Court: The fact that there is a dispute between the parties would also be evident from the submissions made by learned counsel appearing on behalf of the parties. While the petitioner relies on an arbitration clause in the e-bidding document issued by the respondent, the respondent relies on an arbitration clause in the work order issued by the respondent to the petitioner. The respondent seeks to take a preliminary objection to the application by relying on the later arbitration clause which provides that the principal court of Original Jurisdiction, District Lucknow which is subordinate to the High Court,

Allahabad (Lucknow Bench) will alone have jurisdiction to the exclusion of all other courts. Apart from the wording of Clause 16 of the work order being vague, it is not clear whether this is the arbitration clause or the governing jurisdiction clause of the contract.

On the other hand, it is clear from the correspondence between the parties that the dispute is centred around Clause 12(h) of the e-bidding document which provides that the petitioner will be bound by the rates given by the petitioner in other bids and will not be permitted to quote a higher price to the respondent. This would also be evident from the respondent's mail to the petitioner on 4th March, 2017 and the petitioner's response to the same dated 28th February, 2019.

The petitioner invoked the arbitration clause of the e-bid document on 30th May, 2019 also explaining the import of Clause 12(h) and the fact that the petitioner was not bound by Clause 12(h) since the petitioner was not the successful bidder in the other bids. The respondent has not replied to this letter.

The series of documents exchanged between the parties would show that the respondent initiated the dispute and made the dispute anchored through Clause 12(h) of the e-bidding document. The respondent cannot now reverse such stand to rely on the arbitration clause in the work order.

Incidentally, the arbitration clause in the e-bidding document does not signify either a seat or a venue.

The referral court in a Section 11 application is only to see whether there is a dispute between the parties and whether the dispute can be relatable to the arbitration agreement. The petitioner has also complied with Section 11(5) but the respondent's failure to respond to the same would bring the parties both under Section 11(5) as well as (6) of the 1996 Act.

The contention of learned counsel appearing for the respondent that the parties have agreed to an Arbitrator in the arbitration clause in the work order is not acceptable since the Court has already come to a finding that the parties would be bound by the arbitration clause in the e-bidding document. Second, the named Arbitrator would also be hit by Section 12(5) of the 1996 Act read with the Fifth and Seventh Schedules thereto.

AP/96/2021 is accordingly allowed and disposed of by appointing Mr. Soumo Choudhuri, counsel 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 14th October, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)