

AP/45/2023

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

USHA MARTIN LIMITED
VERSUS
AL SIFAH MINERALS PRIVATE LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 2ND MARCH, 2023

APPEARANCE:
Mr. Chayan Gupta, Advocate
....for the petitioner

The Court:- Two affidavits of service filed by the applicant are taken on record.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the agreement for sale of SMS slag was entered into between the parties on 9th February, 2022 which contains the following arbitration cause:-

"6. JURISDICTION: It is hereby agreed between the parties that the courts at Kolkata shall have exclusive jurisdiction in respect of all disputes rising under or out of this agreement.

7. ARBITRATION: If at any time, any question, dispute or difference whatsoever arises between the parties upon or in relation to or in connection with the Agreement, the parties may forthwith notify the other in writing of the existence of such question, dispute or difference and the same shall be referred to the adjudication of sole arbitrator to be nominated by the managing Director of UML. In case designation of the General Manager (Finance) is changed or his office is abolished, the officer who for the time being is entrusted with the functions of the General Manager (Finance) by whatsoever designation such officer is called, shall nominate the sole arbitrator to adjudicate upon the disputes and there shall be no objection to any such nomination/appointment. The decision of the sole Arbitrator shall be final and binding on the parties to this Agreement. The arbitrator proceedings shall be governed by the Arbitration and Conciliation Act 1996 and rules framed there under. The venue of Arbitration shall be Kolkata. The Arbitrator's fee, expenses and all other costs and other expenses relating to the holding of arbitration shall be borne by the parties equally."

He has also pointed out that though in terms of the agreement, applicant had supplied the SMS slag but the respondent had committed default in payment of the invoice amount, therefore, invoking the arbitration clause, applicant had served the notice dated 28th November, 2022 proposing the name of the sole Arbitrator. But in spite of receipt of the said notice, respondent had not acceded to the prayer of the applicant.

In spite of service of notice, no one has appeared to controvert the submission of the counsel for the applicant.

Hence, on the basis of uncontroverted plea, a case for allowing the prayer for appointment of the sole Arbitrator to resolve the disputes between the parties is made out. Accordingly, the AP is allowed. Mr. Asish Sikder [8116560088], an Advocate of this Court is appointed as the sole arbitrator to resolve the disputes between the parties, subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court, within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side, forthwith.

(PRAKASH SHRIVASTAVA, C.J.)