

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

AP/64/2023

ALCOVE CONSTRUCTION PVT. LTD.
VERSUS
VODAFONE IDEA LIMITED

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

Date: 16th March 2023.

APPEARANCE:

Mr. Jayanta Sengupta, Advocate
Mr. Shayak Mitra, Advocate
Mr. Abhihit Sarkar, Advocate
Mr. Abhik Chitta Kundu, Advocate
... for applicant.

Mr. Jishnu Chowdhury, Advocate
Mr. Arnab Basu Mullick, Advocate
... for respondent.

The Court:- Affidavit of service filed by the applicant is 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 disputes between the parties.

Learned counsel for the applicant has pointed out that the agreement for installation of IBS was executed between the parties on 31st July 2015, which contained the following arbitration clause:-

“11. ARBITRATION

11.1 All dispute or difference arising between the parties touching or concerning this Agreement or construction meaning or effect thereof or any clause herein contained or as to the rights and liabilities of the parties under this Agreement or otherwise touching the subject matter of this Agreement or implementation thereof during its subsistence or thereafter shall be resolved through mutual discussion and such mutual discussion shall being promptly after party has delivered to the other party a written request for such mutual discussion AND in the event parties are

unable to resolve the dispute through mutual discussion within 15 days from the date of receipt of such written request, then such disputes shall be decided by sole arbitrator to be appointed by the consent of both the parties herein. The arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Arbitrator shall give reason for the award, which shall be final and binding and conclusive upon the parties. The venue of such arbitration shall be Kolkata and the cost of the Arbitration shall be borne equally by the parties herein and the proceeding of the arbitration shall be conducted in English.”

He has further pointed out that since the dispute had arisen, therefore, applicant had sent the notice dated 6th September 2021 under Section 21 of the Act invoking the arbitration clause and proposing the name of the arbitrator. In spite of service of the said notice, no response was received.

Learned counsel for the respondent has not disputed the arbitration clause and has agreed to appointment of the sole arbitrator.

Hence, with the consent of learned counsel for the parties, Sri Sakya Sen, Advocate of this Court, is appointed as sole arbitrator to resolve the dispute between the parties, subject to submission of declaration by the proposed 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.]