

OD-2

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

AP/86/2023

GANTREX INDIA CRANE RAILS PRIVATE LIMITED
VS
SIMPLEX INFRASTRUCTURE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 19th April, 2023

Appearance:
Mr. Srijib Chakraborty, Adv.
Mr. Dipankar Saha, Adv.
Mr. S. K. Das, Adv.
...for the petitioner

Mr. Snehashis Sen, Adv.
...for the respondents

The Court:- Learned counsel for the petitioner contends that in view of the specific arbitration clauses in the two purchase orders in question, which arise from a single composite work, an arbitrator ought to be appointed, as the invocation under Section 21 of the Arbitration and Conciliation Act, 1996 has failed to evoke any agreement between the parties on the arbitrator.

Learned counsel appearing for the respondents submits that the present composite application under Section 11 of the 1996 Act is not maintainable in law.

First, it is submitted that the invocation was common for different purchase orders, which were independent and distinct on point of time.

Also, the composite applications cannot be clubbed together, since there are distinct and different purchase orders, all having separate arbitration clauses.

In this context, learned counsel for the respondents places reliance on the judgment of *Duro Felguera* reported at (2017) 9 SCC 729. By placing particular reliance on paragraph no. 22 of the said judgment, learned counsel contends that if there are separate subject matters and separate and distinct works covered by the separate contracts, each containing separate arbitration clauses, there cannot be a composite invocation under Section 21 and/or a single application under Section 11 of the 1996 Act.

Learned counsel further places reliance on paragraph number 42 of the judgment where the Supreme Court took into consideration the judgment of *Chloro Controls India Private Limited* and distinguished the case at hand from the said report in the line that in *Chloro Controls (supra)* there was a principal parent agreement, under and in connection with which the subsequent agreements were entered into.

It is submitted that unless there is a parent agreement, the arbitration clauses are distinct and different and cannot be clubbed together.

Learned counsel for the respondents reiterates that in the present case there is no parent agreement as such.

Learned counsel appearing for the petitioner opposes such contention and submits that the purchase orders, although separate, refer to the same contract number.

Upon hearing learned counsel for the parties, it transpires that although the different purchase orders clubbed together are distinct and different in identity, both the said purchase orders pertain to the same work. That apart, although issued at different points of time, it cannot be said strictly that the subject matters of the two are dissimilar or that they contemplate separate and distinct works. Although on a hyper-technical consideration the purchase orders contemplated different bulks of orders, but in effect and for all practical purposes, the said orders were in aid of the same work process.

Moreover, there is no specific bar in the statute itself to a composite invocation under Section 21 of the 1996 Act being issued. If there is a dispute and difference between the parties, if the bundle of facts which give rise to the same chain of cause of action is the same for all the said agreements, there is no reason why arbitrators/arbitrator ought not to be appointed for dealing with and deciding the disputes arising out of all such connected agreements. Moreover, in the present case, the language of the arbitration clauses in all the purchase orders is similar; rather, they are almost identical.

In view of the above discussions, there cannot be any reason to hold that the invocation under Section 21 of the 1996 Act was vitiated by any illegality or irregularity.

However, learned counsel for the respondents is justified in submitting that at least for the purpose of the records, separate applications under Section 11 ought to have been filed by the petitioner. Although agreeing in principle with such suggestion, I am of the opinion that unnecessary technicalities, mandating the petitioner to withdraw the present petition and file separate applications

under Section 11 of the 1996 Act, would enure to the benefit of none of the litigants. The said defect, if any, is curable, to say the least, by directing the petitioner to deposit the additional Court fees as would be deemed fit for separate applications under Section 11 of the 1996 Act.

In such view of the matter, AP/86/2023 is disposed of by appointing Mr. Siddhartha Banerjee [Mobile no.:-9830298922], an Advocate practising in this Court, as the sole Arbitrator to resolve the dispute between the parties pertaining to the purchase orders referred to in the present application under Section 11 of the Arbitration and Conciliation Act, 1996, subject to obtaining his declaration/consent under Section 12 of the 1996 Act.

However, as a pre-condition for this order to take effect, the petitioner shall deposit the additional Court fees equivalent to that of separate applications under Section 11 of the 1996 Act for the different purchase orders in respect of which appointment has been sought in the application. Such deposit shall be made by the petitioner within an outer limit of April 21, 2023. In default, however, this order shall stand automatically revoked and the matter shall be placed in the list for further hearing.

(SABYASACHI BHATTACHARYYA, J.)