

OD-24

ORDER SHEET

AP/370/2021

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

GAMMON ENGINEERS AND CONTRACTORS PVT. LTD.
VS
KOLKATA METRO RAIL CORPORATION LIMITED

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : 21st April, 2023

Appearance:

Mr. Ishaan Saha, Adv.

Mr. Aditya Sarkar, Adv.

Mr. Jishnu Chowdhury, Adv.

Ms. Sreya Basu Mullick, Adv.

Mr. Ankit Dey, Adv.

The Court: Heard Counsel appearing on behalf of the parties.

The arbitration clause in the agreement between the parties is delineated below:-

“20.6 Nomination of Arbitrators/Sole Arbitrator

Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed Rs.1.50 millions. Beyond the claim limit of Rs.1.50 million, there shall be three arbitrators. For this purpose the Employer will make out a panel of Engineers with the requisite qualifications and professional experience relevant to the field to which the Contract relates. This panel will be from serving or retired Engineers of Government departments or of Public Sector. There will be no objection if the arbitrator/Engineer so appointed is an official of

KMRC of the rank of Deputy and above. The arbitrator/Arbitrators shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. In case of a single arbitrator, the Panel will be of three Engineers, out of which the Contractor will choose one. In case three arbitrators are to be appointed, the Employer will make out a panel of five. The Contractor and the Employer will choose one arbitrator each and the two so chosen will choose the third arbitrator. Neither party shall be limited in the proceeding before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Kolkata only. The language of proceedings, that of documents and communication shall be English and the award shall be made in writing. The arbitrators shall always give item-wise and reasoned award in all cases where the value of total claim exceeds Rs.1.00 millions. Where three arbitrators have been appointed, the award by the majority will prevail.”

Upon perusal of the clause it appears that the respondent is required to provide five names out of which one would be chosen by the petitioner and the remaining two by the respondent. On a suggestion made by this Court, Mr. Jishnu Chowdhury, Counsel appearing on behalf of the respondent has agreed to provide 11 names out of which one name shall be chosen by the petitioner. Such names should be provided within two weeks from date. The petitioner is thereafter directed to provide one name out of 11 names within a period of one

week thereafter. The respondent is subsequently directed to choose their arbitrator within a period of two weeks from the date of receipt of the name from the petitioner. The two arbitrators are thereafter directed to choose the third presiding arbitrator and commence the proceedings expeditiously.

With the above directions, this Section 11 application being AP/370/2021 is disposed of.

I make it clear that this order shall not operate as a precedent that 11 names are required to be provided in each instance by the respondent.

(SHEKHAR B. SARAF, J.)

R.Bhar