

OD-5

ORDER SHEET

AP/193/2023

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

WEST BENGAL STATE ELECTRICITY TRANSMISSION COMPANY LIMITED
Versus
JAYASHREE ELECTROMECH PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 26th June, 2023.

Appearance:

Mr. Pranit Bag, Bar-at-Law

Mr. Anuj Kr. Mishra, Adv.

Mr. Debdatta Saha, Adv.

Mr. Balaram Patra, Adv.

...for the petitioner

Mr. Rupak Ghosh, Adv.

Mr. S. Pal Choudhuri, Adv.

...for the respondent

The Court: First, the petition does not contain the basic/parent agreement between the petitioner and the respondent. Second, the only document which is shown to be the governing agreement between the parties is a General Conditions of Contract with a top note of "Annexure No. C-66". There is no reference to the origin of the GCC or whether the GCC has been incorporated by reference to the agreement between the parties.

The more fundamental issue is that Clause GCC.6 – Disputes – provides for an adjudicator under Clause 6.1/6.1.1 who will give its decision in writing to both parties within 30 days of the parties approaching the adjudicator under

Clause 6.1.2. The procedure for appointment of the adjudicator is provided under Clause 6.1.3. GCC 6.2 is a separate clause of disputes-resolution where arbitration has specifically been mentioned. Clause 6.2.1 makes it abundantly clear that if the purchaser or the contractor is dissatisfied with the adjudicator's decision, either of the parties may within 60 days thereafter give notice to the other party and commence arbitration in accordance with Clause 6.2.2.

Any further reference to the clauses is unnecessary since the GCC makes it clear that the impugned order which is under challenge dated 27th March, 2023 has not been passed by an Arbitrator but by an adjudicator. This is also the admitted position of the parties before the Court.

Section 34 of the Act gives recourse to a party against an arbitral award. An "Arbitral Award" has been defined under Section 2(1)(c) and an "Arbitral Tribunal" under Section 2(1)(t) of the Act. These definitions and the clauses of the GCC make it clear that the present application is not one which fits into the contours of an application that can be made under Section 34. This being the case, there is also no entry point through which the Court can enter into the merits of the disputes.

AP/193/2023 is accordingly dismissed without any order as to costs.

(MOUSHUMI BHATTACHARYA, J.)