

OD-9

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

AP/254/2023

WATERTECH ENGINEERS PVT. LTD.
VS
SYAMA PRASAD MOOKERJEE
PORT, KOLKATA (KOLKATA PORT TRUST) AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 15th May, 2023

Appearance:
Mr. Debashis Banerjee, Adv.
Ms. Moumita Pandit, Adv.
Mr. S. Naskar, Adv.
...for the petitioner

Mr. Ritzu Ghasal, Adv.
Mr. Ashok Kumar Jena, Adv.
...for the respondent

The Court:- A dispute has been raised between the parties pertaining to the purported termination of the contract between the parties.

Learned counsel for the petitioner places reliance on Clause 7.91.1 of the concerned agreement, which contains the arbitration clause, for the purpose of invoking such clause. It is argued that an invocation notice was duly sent under Section 21 of the Arbitration and Conciliation Act, 1996 to which no proper response was received from the respondents.

Learned counsel for the respondents submits that it was contemplated in the arbitration clause itself that prior to any reference to arbitration, the party raising the dispute has to refer the same in writing to the Engineer. It is further

contained in Clause 7.91.1 that such reference shall state that it is made pursuant to the clause.

Learned counsel appearing for the petitioner places reliance on a communication dated February 3, 2023 made by the petitioner to the General Manager (Engineering) of the S.P. Mukherjee Port, indicating that the said communication was in substantial compliance of such provision to refer the matter to the Engineer. It is submitted that, for all practical purposes, it was the General Manager (Engineering) who was the terminating authority as well as the person acting as Engineer within the contemplation of the contract.

Hence it is argued that there was sufficient compliance of Clause 7.91.1 as regards prior reference to the Engineer.

Although the respondent is justified in contending that there was no specific reference to Clause 7.91.1 of the contract in the communication dated February 3, 2023, the same was addressed to the General Manager (Engineering), who had, for all practical purposes, acted as the Engineer as contemplated in the said contract.

As per Clause 7.1.2(g) of the agreement, "Engineer" means the person appointed by the Employer to Act as the Engineer for the purposes of the contract and named in the contract, or other person appointed from time to time by the employer and notified to the contractor under GCC Clause No. 7.1. Since the said definition is fluid enough to cover the General Manager (Engineering), who acted in terms of the said definition throughout the transactions between the parties, such letter is deemed to be substantial compliance of the clause in question. The stipulation in Clause 7.91.1, as to mention of the specific clause in

the reference, cannot be an integral part of the agreement going to the root of the same but is only an ancillary provision embellishing the arbitration clause otherwise envisaged in Clause 7.91.1.

Hence, for the purpose of invocation to arbitration, sufficient compliance of Clause 7.91.1 has been made by the petitioner prior to making the invocation.

Since the dispute between the parties falls within the purview of the arbitration clause and the dispute is otherwise arbitrable, there cannot be any further impediment to appoint an arbitrator to resolve the dispute between the parties.

Accordingly, AP/254/2023 is allowed, thereby appointing Mr. Siddhartha Banerjee (Mobile No. 9830298922), an Advocate of this Court, as the sole arbitrator to resolve the disputes between the parties, subject to obtaining his declaration/consent under Section 12 of the Arbitration and Conciliation Act, 1996.

(SABYASACHI BHATTACHARYYA, J.)