

OD-11-14

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

AP/268/2023

GOLAM KIBRIA
VS
ITI LIMITED

AP/269/2023

GOLAM KIBRIA
VS
ITI LIMITED

AP/270/2023

GOLAM KIBRIA
VS
ITI LIMITED

AP/271/2023

GOLAM KIBRIA
VS
ITI LIMITED

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 16th May, 2023

Appearance:

Mr. Subhankar Nag, Adv.
Mr. Tanweer J. Mandal, Adv.
Ms. Somashree Dey, Adv.
Ms. Tuhina Parvin, Adv.
Mr. Shreyan Chakraborty, Adv.
...for the petitioner

Mr. Soumak Bhattacharya, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. S. Mondal, Adv.
...for the respondent

The Court:- Learned counsel for the petitioner contends that the dispute which has arisen between the parties, as summarised in the application under

Section 11 itself, falls within the purview of the arbitration clause, that is, Clause 19 of the relevant agreement, being the master service agreement dated June 21, 2021.

It is contended that the petitioner was one of the contractors who was successful in the tender in this regard for four contracts in respect of the same project and the present dispute pertains to the said contracts.

Learned counsel further contends that since the subject matter of the four contracts are similar and arise out of the same parent project, a composite appointment may be made for arbitration.

Learned counsel cites *Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. And Others*, reported at (2013) 1 Supreme Court Cases 641 and *Ameet Lalchand Shah And Others. vs. Rishabh Enterprises and Another*, reported at (2018) 15 SCC 678, for the proposition that if all the agreements pertain to a single principal or mother agreement, there can be a composite reference insofar as arbitration is concerned. Learned counsel places particular reliance paragraphs 76 and 118 of *Chloro Controls (Supra)* as well as paragraphs 12.1 and 22 to 24 of *Ameet Lalchand (Supra)*.

It is seen from the records, as also pointed out by learned counsel for the petitioner, that the invocation under Section 21 of the Arbitration and Conciliation Act, 1996 was duly made on March 3, 2023, which has been annexed in the present application as well. Subsequent replies to the same sent by the respondent were withdrawn still thereafter by a communication made by the respondent indicating that the respondent does not want to rely on such replies.

Learned counsel for the respondent primarily opposes the prayer of the petitioner on the merits of the dispute which has arisen between the parties. However, it would be premature to go into such query within the limited scope of Section 11, sub-Sections (6) and (6A), of the 1996 Act. As apparent from the records, there is a valid arbitration clause in the form of Clause 19 of the concerned agreement, within the purview of which the present disputes have arisen between the parties.

The disputes are otherwise arbitrable.

Since the disputes arise out of four connected contracts of similar nature, which are part of the same project, it would only be prudent if a single arbitrator is appointed for the purpose of a composite reference of all the four dispute.

Hence, AP/268/2023, AP/269/2023, AP/270/2023 and AP/271/2023 are allowed, thereby appointing Mr. Samrat Sen (Mobile No. 9830173356), Senior Advocate, who practises in 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.)