

OD-6

ORDER SHEET

AP/287/2023

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

POONAM ENTERPRISE  
Versus  
THE CEO, STEEL AUTHORITY OF INDIA AND ANR.

BEFORE:  
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA  
Date : 26<sup>th</sup> July, 2023.

*Appearance:*  
*Mr. Subhabrata Chowdhury, Adv.*  
*Ms. Tripti Pandey, Adv.*  
*Mr. Biswajit Goswami, Adv.*  
*...for the petitioner*  
  
*Mr. Lakshmi Kanta Pal, Adv.*  
*...for the respondents*

The Court: The initial point taken on behalf of the respondent in resisting the application for appointment of Arbitrator is the allegedly palpable delay on the part of the petitioner in approaching the Court.

Learned counsel appearing for the respondent had relied on an order passed by a learned Single Judge, as His Lordship then was, on 19<sup>th</sup> December, 2019 by which the Court was of the view that the application framed is not maintainable and the petitioner was given leave to withdraw the application with liberty to file afresh. According to counsel, the petitioner waited in excess

of three years thereafter before filing the present application under Section 11 of the 1996 Act.

The supplementary affidavit of the petitioner which was filed pursuant to leave granted by the Court shows communications between the parties in the interregnum i.e., from 16<sup>th</sup> July, 2020 to 22<sup>nd</sup> July, 2021 essentially in the form of the petitioner making several requests to the respondent for appointment of an Arbitrator and the respondent objecting to the invocation of the arbitration clause before exhausting the option of conciliation.

The communications exchanged between the parties also show that the petitioner agreed to conciliation and made several attempts for appointment of a Conciliator which the respondent did not take and kept the petitioner waiting for resolution.

The agreement between the parties shows that the arbitration clause is preceded by a conciliation clause at Clause 20.0 of the General Commercial Terms and Conditions of the revised purchase order. Clauses 20 and 21 make it clear that parties were first to pursue conciliation and only thereafter pursue arbitration on the failure of conciliation.

This evidently has not been done since the correspondence shows that the petitioner requested the respondent for taking steps under Clause 20.0 of the purchase order. The present application is hence premature.

The parties shall complete the conciliation within the timeframe under Clause 20 of the Agreement and the parties shall take all other steps in respect of the said clause.

AP/287/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

R.Bhar