

OD-3

ORDER SHEET

AP/380/2023

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

M/S. N N CONSTRUCTION
Versus
ENGINEERING PROJECTS INDIA LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 3rd July, 2023.

Appearance:

Mr. Subir Banerjee, Adv.

Mr. Sauvik Dev, Adv.

Mr. Sayak Mitra, Adv.

...for the petitioner

Mr. Arnab Chakraborty, Adv.

Ms. Pragya Bhowmick, Adv.

...for the respondent

The Court: The dispute between the parties relates to an Agreement dated 27th April, 2022 whereby the petitioner was engaged as a contractor for infrastructural development works of Upper Primary and Primary Schools in certain districts of Odisha.

Article 2.0 – “Contract Documents” – requires that the contract be performed as per the terms and conditions stipulated in the “Contract Documents”. The Clause further refers to a Notice Inviting Tender dated 8th November, 2021 which in turn refers to the General Conditions of Contract and

the Additional Conditions of Contract in Clause 2.0 of Section T of the short notice inviting e-tender.

The arbitration clause is contained in Clause 76.0 of the General Conditions of Contract and Clause 18 of the Additional Conditions of Contract. Both the clauses are identical and provide for a sole Arbitrator to be appointed by the Chairman and Managing Director of the respondent or any other person discharging the functions of CMD of the respondent. The clause further provides that the Arbitrator shall be appointed within 30 days of the receipt of letter of invocation upon satisfaction of the requirements of the clause.

The dispute between the parties is admittedly on record and includes the respondent terminating the agreement on 2nd January, 2023 and failing to pay the running account bills of the petitioner. The respondent also invoked the bank guarantee furnished by the petitioner; a few of these facts are stated in the petitioner's letter of invocation of the arbitration clause dated 12th February, 2023. The letter refers to both Clauses 76 and 18 of the GCC and the ACC as stated above.

Apart from the arbitration clause being clearly contrary to the law laid down by the Supreme Court and the High Courts with regard to unilateral appointment of Arbitrators as well as the provisions of the 1996 Act, the point raised on behalf of the respondent that the petitioner has not explored the option of conciliation is also not acceptable. The letter of invocation clearly states that the petitioner approached the respondent for conciliation but the respondent failed to take steps in this regard and the dispute hence remained

unresolved between the parties. Counsel for the respondent disputes this fact. Whatever the case may be, there is no doubt that a dispute exists between the parties.

The petitioner hence had no other option but to invoke the arbitration clause as provided under the GCC and ACC.

The existence of the arbitration agreement as well as the disputes between the parties would hence make this a case which would fall under Section 11(6)(a) of the 1996 Act.

AP/380/2023 is accordingly allowed and disposed of by appointing Mr. Asish Sikdar, former District Judge (Mob. No.- 8116560088) to act as the Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his consent in the prescribed form under the provisions of the Act read with the Schedules to the Registrar, Original Side within three weeks from date.

The petitioner shall communicate this order on the Arbitrator forthwith.

(MOUSHUMI BHATTACHARYA, J.)