

ORDER SHEET

AP/399/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

MEDI CARRIER PRIVATE LIMITED
Versus
SEEMA AGARWAL (NEE AGARWAL)

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 18th July, 2023.

Appearance:

Ms. Noelle Banerjee, Adv.

Mr. Rishav Dutt, Adv.

Ms. S. Basu, Adv.

...for the petitioner

Ms. Aparajita Rao, Adv.

Mr. Sonwal Tibrewal, Adv.

Ms. Ankana Basu, Adv.

...for the respondent

The Court: This is an application filed under Section 11 of the 1996 Act.

The petitioner before this Court is a seller of South African coal to the respondent proprietorship firm which was reduced, according to the petitioner, in the form of an Agreement dated 6th September, 2022. Clause 11 of the said Agreement contains the governing law in relation to the petitioner's claim of money which was due and payable to the petitioner by the respondent on account of the supplies made. The petitioner claimed an amount of Rs.3,61,56,500/- as on 3rd April, 2023. The respondent paid EMD of about

Rs.1.30 crores to the petitioner before the terms of the agreement were fructified and the respondent agreed that the respondent would lift the imported coal within 40 days from the date of import.

The respondent however refused to lift the quantity within the agreed time frame on various pretexts which led the petitioner to issue several reminders on the respondent. The respondent in turn sought for time in its replies including by the mail dated 25th January, 2023.

This led the petitioner to issue a notice invoking the arbitration clause on 3rd April, 2023 under Section 21 of the 1996 Act and the respondent replied to this letter on 3rd May, 2023. The respondent denied the agreement as well as the fact of the respondent acting in terms of any agreement between the parties.

The affidavit-in-opposition of the respondent, however, belies the stand taken by the respondent in its reply of 3rd May, 2023. There are several paragraphs in the affidavit which unequivocally states that the parties may be referred to arbitration. The respondent has raised other contentions in the affidavit which are also contrary to the letter of 3rd May, 2023. In the relevant paragraphs, the respondent admitted to transfer a sum of Rs.1.30 crores to the account of the petitioner on two days in September, 2022 and also to the fact that the respondent requested the petitioner to forward a quotation for supply and sale of coal which was to be imported from South Africa.

The respondent's affidavit, in essence, admits to an agreement between the parties as also the fact that the respondent made payment of Rs.1.30 crores to the petitioner by way of EMD.

It is evident that the petitioner has invoked the arbitration clause and the respondent has disagreed with the contentions raised by the petitioner. Hence, it is true that a dispute exists between the parties and the parties fall under Section 11(6)(a) of the 1996 Act.

AP/399/2023 is, accordingly, allowed and disposed of by appointing Soumitra Pal, former Judge of this Court to act as the Arbitrator for resolving the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side within a period of three weeks from date.

The petitioner shall communicate this order on the Arbitrator by 20th July, 2023 with the particulars of the petitioner's advocate-on-record for the Arbitrator to make necessary communication.

(MOUSHUMI BHATTACHARYA, J.)