

OD-2

ORDER SHEET

AP/507/2023

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

DIBYENDU BOSE
VS
THE GENERAL MANAGER SOUTH
EASTERN RAILWAY AND ORS

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th September, 2023.

Appearance:

Mr. Domingo Gomes, Adv.

Mr. Jayabrata Mukherjee, Adv.

Mr. Kanakendu Chatterjee, Adv.

...for the petitioner

Ms. Sanjukta Gupta, Adv.

...for the respondents

The Court: The dispute between the parties arises out of an Agreement which forms part of the tender document and e-tender notice of 5th July, 2017. The petitioner was the succesful bidder and entered into a contract with the respondent South Eastern Ralway on 2nd April, 2018. The petitioner was to supply, errect, test and commission Overhead Electrical and Power Supply Installation work in connection with the Freight Terminal, Sankrail. The contract value was approximately of an amount of Rs.3.53 crores. The contract was made subject to the General Conditions of Contract (GCC) which in turn provides for a demand for "Arbitration" under Clause 64.(1) of the GCC. Clause 64.(1) provides for a mechanism by which the Railway is to take a decision

within 120 days of any claim made by a contractor except the “excepted matters” under Clause 63.1 of the GCC.

Clause 1.0 of the Regulations for Tenders and Contracts which forms part of the Indian Railways Standard General Conditions of Contract makes it clear that the GCC would apply to all tenders and contracts of Railways including the present contract. A notification dated 16th July, 2020 of the Ministry of Railways, also makes it clear that the GCC of July, 2020 shall be applicable to works contracts on Indian Railways with prospective effect.

The petitioner, through learned counsel, urges that the respondent Railways terminated the contract stood extended and also forfeited the security deposit as well as the performance bank guarantee furnished by the petitioner. The petitioner made a claim on the respondent Railways on 20th December, 2021 which was also in the form of representation. The petitioner also invoked the arbitration clause in Clause 64.(1) of GCC by way of a notice issued under Section 21 of the 1996 Act to the respondent on 22nd August, 2022.

The petitioner now claims an amount of approximately Rs.1.20 crores. The petitioner’s claim is part of a letter dated 16th November, 2022.

Learned counsel appearing for the respondent South Eastern Railway refers to the representation made by the petitioner on 20th December, 2021 and argues that the only instruction is that the GCC of 2014 be followed since that GCC was prevailing at the time of the contract of 2nd April, 2018.

Upon hearing the submissions made on behalf of the parties, there is no doubt that the parties have an existing dispute between them. The petitioner’s

performance bank guarantee and security deposit have been forfeited in accordance with the terms of the contract and the petitioner's claim also arises out of unpaid invoices.

Whether the GCC of 2020 or 2014 will be followed is a matter which must be decided by the Arbitrator. This would also form part of the disputes between the parties. The arbitration agreement is also undisputed.

More than 120 days have passed since the representation was sent by the petitioner on 20th December, 2021 and there can hence be no further impediment for the Court to appoint an Arbitrator in terms of the arbitration clause.

AP/507/2023 is accordingly allowed and disposed of by appointing Mr. L.K. Gupta, counsel to act as the Arbitrator subject to the learned Arbitrator communicating his/her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the Arbitrator by 7th September, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)