

OCD-1

ORDER SHEET

AP/640/2023

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

BALASORE ALLOYS LIMITED
Versus
MSTC LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 13th September, 2023.

Appearance

Mr. Ritoban Sarkar, Adv.
Ms. Tanvi Luhariwala, Adv.
...for the petitioner

Mr. Sarbajit Mukherjee, Adv.
Mr. Sourjya Roy, Adv.
...for the respondent

The Court:.. The dispute between the parties arises out of an Agreement dated 1st April, 2014 and relates to the petitioner procuring coal from the respondent who in turn was to procure the coal from the open market.

The petitioner, in essence, is the buyer and the respondent a supplier. The petitioner says that the respondent acted as an agent for the petitioner to procure the coal from the open market and supply the same to the petitioner. The Agreement dated 1st April, 2014 contains an arbitration clause at Clause 23.0 which provides for arbitration to be settled under the 1996 Act.

The material placed before the Court as well as the submissions made on behalf of the parties show that the parent Agreement of 1st April, 2014 was extended four times, more specifically in 2016, 2017, 2018 and 2019 along with changes to the rates with regard to payment applicable and interest. Each of these agreements refer to the parent Agreement and states that the subsequent agreements are only for extending the validity of the parent Agreement.

There is no dispute raised with regard to existence of the arbitration Agreement or continuation thereof under the parent Agreement of 1st April, 2014. The petitioner admittedly committed defaults in 2019 and a brush with CIRP proceedings thereafter. The petitioner however repaid the principal sum of Rs.13 crores in 2023 although the respondent disputes this fact.

The dispute now revolves around the respondent retaining certain goods as security and the petitioner claiming release of those goods.

The fact of a dispute between the parties existing relatable to the arbitration agreement is clear from the material placed before the Court. The parties hence fall within Section 11(6) of the 1996 Act and an arbitrator must be appointed in terms of the arbitration agreement.

AP/640/2023 is accordingly allowed and disposed of by appointing Mr. S. Muralidhar, former Chief Justice of the Orissa High Court to act as the Arbitrator subject to the learned Arbitrator communicating his 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 learned Arbitrator by 16th September, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

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