

OD-7

ORDER SHEET

AP/646/2023

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

PACEMAN SALES PROMOTIONS PRIVATE LIMITED
VS
SUZLON ENERGY LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 3rd October, 2023.

Appearance:

Mr. K. R. Thaker, Adv.

Ms. Suchismita Chatterjee Ghosh, Adv.

Mr. Malay Kumar Seal, Adv.

...for the petitioner

Mr. Rishad Medora, Adv.

Ms. Ankita Choudhury, Adv.

...for the respondent

The Court: There is no dispute that the parties are amenable under the arbitration clause provided in a purchase order dated 4th August, 2005 which includes "Standard Arbitration" in Clause 12 of the General Terms of the purchase order. Parties understand and accept the arbitration agreement to be couched in Clause 12 of the purchase order.

The parties' acceptance would also be evident from an ongoing arbitration in respect of the petitioner's claims arising prior to July, 2015 in respect of the petitioner entering into a contract with the respondent for setting up of wind turbines. The respondent allegedly failed to reach the minimum

guarantee output of the electricity to be generated from the wind turbines. Disputes arose between the parties and were referred to a learned sole Arbitrator. The reference began in 2014. The Court has been informed that the arbitration is yet to culminate in an award.

The parties have now come to the Court with disputes on and from August, 2015 in respect of the same contract. The petitioner invoked the arbitration clause in the purchase order by way of a notice under Section 21 of the 1996 Act on 17th August, 2020. The respondent replied to this notice on 5th September, 2020 disputing the statements in the Section 21 notice and raising a counter-claim against the petitioner.

Learned counsel appearing for the respondent does not object to appointment of an Arbitrator but says that some of the claims contained in the Section 21 notice may be barred by limitation.

After hearing learned counsel appearing for the parties, this Court is of the view that since the parties are *ad idem* on the issue of a dispute existing between them, the Arbitrator to be appointed can look into the objection pertaining to some of the claims being time-barred. It is now settled that unless a case of delay is found to be *ex facie* and palpable by the referral court, the question can be referred to the Arbitrator for adjudication.

AP/646/2023 is accordingly allowed and disposed of by appointing Mr. Sahidullah Munshi, former Judge of this Court, to act as the Arbitrator subject to the learned Arbitrator communicating 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 learned Arbitrator by 6th October, 2023 along with the requisite details of the contact person of the petitioner.

Learned counsel appearing for the respondent undertakes to file the Vakalatnama by tomorrow.

(MOUSHUMI BHATTACHARYA, J.)

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