

OCD-3

ORDER SHEET

AP/683/2023

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

SRMB SRIJAN PRIVATE LIMITED
VS
AGGARWAL STEEL INDUSTRIES PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th October, 2023.

Appearance:

Mr. Amritam Mandal, Adv.

Ms. Akansha Yadav, Adv.

...for the petitioner

Mr. Suryaneel Das, Adv.

...for the respondent no.2

The Court: The material placed before this Court shows that the respondent has obtained an order from the Himachal Pradesh High Court on 4th August, 2023 whereby the Court was pleased to restrain the respondent no.1 in the said proceedings, who is the petitioner before this Court, from proceeding any further with the notice dated 10th July, 2023 and the arbitration proceedings which were to be initiated by the Sole Arbitrator. The order was obtained ex parte and the application was disposed of by the Court by the order dated 4th August, 2023. The order reflects that the petitioner

before this Court did not have an opportunity to present its case before the Himachal Pradesh High Court.

The petitioner has filed the present application on 15th September, 2023 for appointment of an Arbitrator under Section 11 of the 1996 Act. The notice issued under Section 21 of the Act is the very same notice which was stayed by the Himachal Pradesh High Court.

Although learned counsel appearing for the petitioner submits that the present application is a fresh proceeding since the Himachal Pradesh High Court mentions the name of the learned sole Arbitrator who was nominated by the petitioner, this Court is of the view that a Section 21 notice is statutorily recognised to be the first step in the commencement of the arbitration proceedings. Hence, the petitioner's argument is not acceptable.

Even though the dispute between the parties is evident from the letters exchanged and appears also to have been admitted by the respondent (petitioner before the Himachal Pradesh High Court) in its affidavit-in-opposition, this Court is however not inclined to appoint an Arbitrator in terms of the very same notice which has been stayed by the Himachal Pradesh High Court. This would result in a conflict in the decisions of two High Courts.

The petitioner shall be at liberty of taking appropriate steps before the Himachal Pradesh High Court including the point of jurisdiction. It is also arguable whether the respondent could have filed any proceeding before the Himachal Pradesh High Court in view of the designated venue in the arbitration agreements.

AP/683/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

R.Bhar