

OCD-3

ORDER SHEET

AP/700/2023

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

HARJI ENGINEERING WORKS PVT. LTD.
VS
BHARAT HEAVY ELECTRICALS LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 5th December, 2023.

Appearance:

Mr. Sirsanya Bandopadhyay, Adv.

Mr. Rahul Kumar Singh, Adv.

...for the petitioner

Mr. Rohit Das, Adv.

Ms. Kishwar Rahman, Adv.

...for the respondent

The Court: The respondent's resistance to appointment of an Arbitrator was initially based on two planks. The first was of the work order, containing the arbitration clause being an unstamped document and second that the petitioner's notice invoking the arbitration agreement was a defective notice.

The first objection has been taken care of since the petitioner has assessed the work order to stamp duty and has paid the assessed stamp duty; the supplementary affidavit is on record.

The Court hence is now confronted with the second objection, namely, whether the notice issued by the petitioner under Section 21 of The Arbitration

and Conciliation Act, 1996, is a proper notice or whether the notice suffers from some defect.

Learned counsel appearing for the parties have taken the Court through the relevant documents, beginning with the arbitration clause in the work order dated 31st May, 2021. The relevant clause is at 35.1.1. For better understanding of the dispute, the relevant part of the clause is set out below:

“The Notice shall contain the particulars of all claims to be referred to arbitration in sufficient detail and shall also indicate the monetary amount of such claim. The arbitration shall be conducted by a sole arbitrator to be appointed by the Head of the BHEL Power Sector Region issuing the Contract within 60 days of receipt of the complete Notice. The language of arbitration shall be English.”

The extracted part shows that the notice invoking the arbitration clause shall contain particulars of (a) all claims in sufficient detail and (b) indicate the monetary amount of such claim.

The question hence is whether the Section 21 notice contained the necessary details as required by the arbitration Agreement.

The petitioner's Section 21 notice of 28th July, 2023, outlined in paragraph 8 thereof, speeches the heads on which the petitioner made its claims against the respondent. The heads which have been specifically stated are damages towards wrongful termination at the risk and cost of the petitioner, loss of profit, business loss, idling, harassment and mental agony,

actual costs of litigation, plant and machinery and interest in terms of Section 16 of the MSMED Act, 2006.

Paragraph 8 quantifies the monetary amount of the claims under the various heads at Rs.30-35 crores and also says that the particulars will be detailed in the claim petition.

The respondent replied to this notice on 29th August, 2023 as well as by mail on 11th September, 2023 asking for further details from the petitioner in respect of the Section 21 notice. The petitioner has approached the Court at this stage.

Section 21 of the 1996 Act does not require any details particulars to be given in the notice for invocation save and except that the notice would mark the commencement of the arbitral proceedings in respect of a particular dispute commencing on the date on which a request for that dispute to be referred to arbitration is received by the respondent. In that sense, the starting point of the dispute, in the present case, would be 28th July, 2023. The respondent's emphasis on the requirement of Clause 35.1.1/the arbitration clause is an instance of over-emphasis and in any event subject to interpretation.

The arbitration clause simply states that the notice shall contain sufficient detail and indicate the monetary amount. Whether the petitioner has disclosed sufficient detail in the notice is a matter of interpretation and this Court is of the view that providing the individual heads of claim of the petitioner would amount to sufficient detail in satisfaction of the particular

clause. The petitioner has in any event quantified the heads of claim as Rs.30-35 crores.

Two things should be borne in mind in the context of the arguments made. First, a notice issued under Section 21 is the commencement of the arbitration where one of the parties to the arbitration invokes the arbitration agreement and refers the dispute to arbitration. The notice is not meant to be a statement of claim. The parties are always at liberty to request for further particulars of the claim in the arbitration itself. Second, a referral Court under Section 11 of the Act is simply to see whether a dispute exists between the parties and whether the dispute is relatable to the arbitration agreement. This proposition is well settled; *Duro Felguera vs. Gangavaram Port Ltd.*, (2017)9 SCC 729 and *Mayavati Trading Private Limited vs. Pradyut Deb Burman*, (2019) 8 SCC 714. The business of the Court stops at the stage of determining whether a dispute exists and the Court is not required to go any further in the matter of ascertaining whether one of the parties has given particulars or otherwise in the Section 21 notice or in any of the other correspondence.

The above reasons persuade the Court to allow the present application for appointment of Arbitrator.

It is evident that there is a dispute between the parties since the petitioner, as the contractor, for commissioning of a plant in Jharkhand, has raised a substantial dispute on account of several heads as mentioned in Section 21 notice including for unpaid bills. The petitioner's claim is approximately Rs.35 crores as on the date of the Section 21 notice.

AP/700/2023 is accordingly allowed and disposed of by appointing Mr. Ramasubramanian, former judge of the Supreme 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 7th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.