

OD-17

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

AP/705/2023

SWAL LIMITED
VS
ESL STEEL LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 17th November, 2023.

Appearance:

Mr. Farhan Gaffer, Adv.

Mr. Kallol Saha, Adv.

Ms. Susrea Mitra, Adv.

...for the petitioner

Mr. Gopal Pahari, Adv.

Ms. Mandeep Kaur, Adv.

...for the respondent

The Court:- The dispute between the parties arises out of an Agreement executed on 30th July, 2021 for supply of coking coal by the petitioner to the respondent for conversion into coke. The petitioner says that the petitioner supplied coking coal to the respondent within the terms of the Agreement but that the respondent failed to pay the entirety of the petitioner's dues. The petitioner claims that Rs.86 lakhs is outstanding from the respondent.

Learned counsel appearing for the respondent opposes the application for appointment of an Arbitrator on the ground that the petitioner has failed to comply with the Arbitration Agreement, which is Clause 22 of the Agreement requiring parties to use their best efforts to amicably resolve any claims and disputes between them. Counsel submits that the petitioner proceeded to issue a notice under Section 21 of the 1996 Act on 12th June, 2023 without first exhausting the amicable settlement route. Learned counsel appearing for

the petitioner places relevant correspondence between the parties to show that the petitioner duly complied with the 45 days requirement under Clause 22 of the Agreement.

The correspondence includes a Minutes of Meeting held on 22nd July, 2022, a letter of demand for payment of the petitioner's dues dated 19th April, 2023, the invocation notice of 12th June, 2023 and the respondent's reply to the notice on 21st July, 2023. The chain of correspondence beginning with the Minutes of Meeting shows that the parties met to resolve the disputes between them in terms of the petitioner making the supplies and the respondent making payment for such supply. Since nothing came out of the Meeting, the petitioner sent a reminder for the outstanding dues on 19th April, 2023 referring to the Minutes of Meeting and putting the respondent on notice that the petitioner does not have any option to take recourse to legal proceedings. The respondent's silence ultimately culminated in the invocation notice of 12th June, 2023. The petitioner invoked Clause 23 of the Agreement which provides for arbitration.

The respondent's reply to the invocation notice itself discloses the disputes between the parties. The contents of the reply reflect that there is a controversy with regard to the quantum of supplies made by the petitioner and the payments made by the respondent for such supplies. The respondent has also raised quality concerns of the coke supplied by the petitioner and has also alleged loss on account of the nature of supplies.

Apart from the respondent's reply disclosing disputes, if the Minutes of Meeting dated 22nd July, 2022 and the petitioner's reminder of 19th April, 2023

are taken as the initiation of the petitioner's grievance, the invocation letter of 12th June, 2023 honours the amicable settlement requirement far in excess of 45 days as required under Clause 23 of the Agreement.

Apart from clear disputes existing between the parties, the disputes are also relatable to the arbitration agreement.

AP/705/2023 is accordingly allowed and disposed of by appointing Mr. Bhaskar Bhattacharyya, former Chief Justice of the Gujarat High Court, to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 20th November, 2023 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)

T.O.
A.R.(C.R.)