

OCD-7

ORDER SHEET

AP/710/2023

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

M/S. BGM CONSORTIUM LIMITED
Versus
M/S. BRIDGE AND ROOF COMPANY I LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 16th October, 2023.

Appearance:
Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Mr. Debangshu Biswas, Adv.

The Court: This is an application for appointment of Arbitrator under Section 11 of the 1996 Act.

Learned counsel appearing for the respondent takes the point of limitation as according to counsel, the claim was first raised in 2017, the petitioner sent the demand as well as the invocation notice on 5th November, 2020 and the respondent replied to this notice on 20th November, 2020. Counsel submits that the present application was filed in 2023 for a cause of action which arose in 2017.

Before going into the merits of the application, the limitation point should first be dealt with.

Apart from the pleadings in the application, the documents disclosed show that the petitioner wrote to the respondent on 27.03.2017 on account of unpaid dues, the respondent replied by way of a mail on 5th December, 2019, the petitioner thereafter invoked the arbitration clause on 5th November, 2020 and the respondent replied to this letter on 20th November, 2020.

Paragraphs 10 and 11 of the application refer to negotiations between the parties but no documents are disclosed in support of this pleading. One other letter disclosed is of 6th December, 2019 from the petitioner to the respondent.

Although there are gaps in the correspondence between the parties, this is not a case where the Court can come to a conclusion that the claim of the petitioner is *ex facie* barred by the laws of limitation and the question of limitation cannot be decided by an Arbitrator. Even if the petitioner's invocation notice of 5th November, 2020 is taken on board, the petitioner is within the three-year period from the issue of the said letter.

With regard to the merits, the petitioner is a sub-contractor and the respondent is the contractor in terms of and under a Memorandum of Understanding dated 18th February, 2011. The principal in this case is Bharat Heavy Electricals which contracted the work of construction of a single flue brick lined chimney at Durgapur to the respondent who in turn sub-contracted the work to the petitioner.

The petitioner's claims arise out of unpaid bills and amount to approximately Rs.1.39 crores. The notice issued under Section 21 of the 1996 Act also annexes a reconciliation chart of the receivables from the respondent.

The fact that disputes exist between the parties would also appear from the submissions made on behalf of the respondent. The parties would hence fall within the arbitration clause which is at Clause 28 of the MoU.

AP/710/2023 is accordingly allowed and disposed of by appointing Mr. Samaresh Banerjee, former Judge of this 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 18th October, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)