

AP/679/2022

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

RASHMI METALIKS LIMITED
-Versus-
SAM GAS PROJECTS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date : 31st March, 2023

Appearance:

Mr. Krishnaraj Thaker, Adv.
Mr. R.N. Ghose, Adv.
Mr. Debrup Bhattacharyya, Adv.
Ms. Rituparna Saha, Adv.
...for the petitioner

Ms. Smitakshi Talukdar, Adv.
Mr. Indradeep Basu, Adv.
Ms. Swagata Roy, Adv.
...for the respondent

The Court: I have heard Counsel appearing on behalf of the parties.

It appears that a work order was issued by the petitioner on 16th November, 2017 that contains an arbitration clause as provided below:

“DISPUTES AND ARBITRATION:

All disputes, or difference whatsoever arising between us and yourselves, in connection with the contract, which cannot be settled through mutual negotiations in good faith, either of us may give the other notice in writing of the existence of such question, dispute or difference. The same shall be settled in accordance with the provisions of Indian Arbitration Act. The arbitrator shall be a person qualified to be appointed as an arbitrator, under the provision. The award of the arbitrator shall be final and binding on the parties and

the persons claiming under them. Work under the contract shall continue, so far, as may be reasonably practical, during the arbitration proceedings, and no payments which may or shall become due shall be withheld on account of such proceedings. The venue for arbitration shall be Kolkata.”

Counsel on behalf of the respondent submits that this purchase order was a draft purchase order which was finalised subsequently by a revised purchase order that was sent by the petitioner to the respondent on November 21, 2017. The revised draft also contains a similar arbitration clause.

In light of the same, it appears that there is no dispute with regard to the existence of an arbitration clause. However, there is definitely a dispute with regard to the purchase order that is applicable between the parties.

Counsel on behalf of the respondent further submits that the validity of the arbitration clause is, accordingly, under challenge by her and she should have the liberty to raise this point before the arbitrator.

Such leave is granted specifically.

In light of the Supreme Court judgments, I am of the view that this matter should be referred to arbitration.

Justice Madhumati Mitra (Retired Judge of Calcutta High Court), Mob. No.9434881178 is appointed as Arbitrator.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

AP/679/2022 is accordingly disposed of.

(SHEKHAR B. SARAF, J.)

bp/sg.