

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

AP/793/2023

BTL EPC LTD.

Vs

WAREE ENERGIES LTD.

For the Petitioner	:	Ms. Noelle Banerjee, Adv. Mr. Sidhartha Sharma, Adv. Mr. Rishav Dutt, Adv. Ms. Debarati Das, Adv.
For the Respondent	:	Mr. Kumarjit Banerjee, Adv. Ms. Sanchari Chakraborty, Adv. Ms. Tanishka Khandelwal, Adv. Mr. Aadil Naushad, Adv.
Last Heard on	:	12.12.2023
Judgment dictated in Court on	:	13.12.2023

Moushumi Bhattacharya, J.

1. The present application filed under Section 11 of The Arbitration and Conciliation Act, 1996, is for appointment of an Arbitrator.
2. The contentions of learned counsel appearing for the parties revolve around 4 purchase orders issued by the petitioner on the respondent for supply of solar modules/equipment for commissioning of a solar power plant in Panagarh, Burdwan. The dispute raised by the petitioner is of defective material supplied by the respondent. The petitioner required the material for carrying out the work as the contractor to its principal, Military Engineering Services. The present application however relates to the agreement constituted by the 4 purchase orders between the petitioner and the respondent.
3. The fact of the dispute would be evident from the correspondence exchanged between the parties including a demand notice dated 22nd June, 2023 relating to 1 of the purchase order, wherein the petitioner alleged breach on the part of the respondent and demanded rectification of the defective solar modules/material supplied by the respondent. The petitioner ultimately issued a notice invoking the arbitration clauses contained in the 4 purchase orders (the notice mentions 3) on 15th September, 2023. The respondent replied on 12th October, 2023 stating that the respondent had supplied the modules as per the approved designs.

4. The fact of dispute is clear from the correspondence. The only question which falls for adjudication is whether the arbitration clauses contained in the four purchase orders can be consolidated in the form of one reference. While learned counsel appearing for the petitioner points to the purchase orders being issued for the solar power plant project in Panagarh, learned counsel appearing for the respondent places clauses from the four purchase orders to say that there should be four references instead of one.

5. The present trend in matters of a similar nature is of consolidation. A consolidation is a matter of expediency in the alternative dispute resolution mechanism where the Courts have refused to dwell on technicalities. The settled law is that the Courts would hold in favour of clubbing of purchase orders/NITs where the documents have been issued in aid of a common project and in the reverse where there is no evidence of any commonality between the purchase orders.

6. In the present case, there are several indications of the 4 purchase orders being issued for a common purpose, namely, the solar power plant which the petitioner was to set up for its principal at Panagarh.

7. The first of such indications would be the respondent's reply to the notice of invocation. The respondent admits to the fact of supplying the modules and other equipment for the solar power plant which was installed at Panagarh.

8. Second, the clauses in the 4 purchase orders are substantially similar, if not identical. Clause 16 requires the supplier (respondent herein) to supply a

performance bond while Clause 17 binds the supplier to certain obligations including in relation to defective material and mentions that the guarantee shall be for 18 months from the date of “completion of final installation and commissioning”. Clause 24.5 mentions a “contract” and the respondent’s obligations under the contract. Clause 35 again mentions the contract together with “all purchase orders” and other such documents attached to the contract and the “entire agreement”.

9. Although learned counsel appearing for the respondent has placed emphasis on certain words in the individual purchase orders including “this order” and “this contract”, an overall consideration of the four purchase orders leaves little doubt that the respondent was to supply material to the petitioner for a common project, i.e., installation and commissioning of the solar power plant at Panagarh. In any event, it hardly matters whether there are 4 references instead of 1. What is of relevance is that the parties have a dispute which needs to be resolved in accordance with the dispute resolution/arbitration clause contained in the 4 purchase orders.

10. AP/793/2023 is accordingly allowed and disposed of by appointing Mr. Tapan K. Dutt, 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.

11. The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 16th December, 2023 along with the requisite details of the contact person of the petitioner.

12. The respondent will be at liberty to urge all points which the respondent has urged before this Court save and except the constitution of the Tribunal and the Court's view on consolidation. The respondent will also be at liberty to urge the point of limitation.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)