

OCD-4

ORDER SHEET

AP/824/2023

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

M/S. ZILLION INFRAPROJECTS PVT. LTD.
Versus
BRIDGE AND ROOF CO (INDIA) LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 5th December, 2023.

Appearance:

Mr. Soumen Das, Adv.

Mr. Altamash Alim, Adv.

...for the petitioner

Mr. Amitabh Shukla, Adv.

Mr. Prakash Ch. Pandey, Adv.

..for the respondent

The Court: The petitioner before the Court is a sub-contractor who successfully participated in NIT issued by the respondent sometime in March, 2011. The petitioner was selected for erection and piping works of alumina refinery project of Utkal Alumina International Limited. Utkal Alumina is the principal in the present case and the respondent is the contractor.

Disputes arose between the parties with regard to claims made by the petitioner on account of unpaid bills. Learned counsel appearing for the petitioner claims that the petitioner completed the project in 2013 and the

respondent issued a completion certificate in 2014. The respondent, however, failed to make payment of the agreed amount to the petitioner and the last payment was made on 17th February, 2017. The petitioner in the meantime went into Corporate Insolvency Resolution Plan (CIRP) on 5th February, 2019. The petitioner issued a notice invoking the arbitration clause contained in the NIT on 27th May, 2023. The petitioner did not receive any reply from the respondent till date.

Learned counsel appearing for the respondent raises a point of service of the Section 21 notice which, however, is not found to be of substance considering Clause 17.5 of the NIT which also includes the option of sending notices by facsimile transmission and deemed service at the time of receipt, provided there is an existence of a positive transmission report from the sender's machine which shall be taken as a conclusive evidence. The petitioner in the present case also sent notices invoking arbitration agreement by mail as well as by speed post.

The other objection raised by the respondent is of limitation. The Supreme Court in *BSNL v. Nortel* (2021) 5 SCC 738 has conclusively held that an objection to limitation in a Section 11 matter will normally be decided by the Arbitrator until and unless the delay is palpable, undisputed and ex-facie evident to the Section 11 Court. In the present case, the respondent has not been able to make out such a case so as to persuade the Court to hold on to the matter and decide the question of limitation. This Court is, accordingly, of

the view that limitation is an issue which is well within the domain of the Arbitrator and the parties can agitate this point in the arbitration.

The dispute between the parties would be evident from the lack of evidence on the part of the respondent to show that the respondent has honoured its contractual obligations in terms of the payment. The dispute is also relatable to the arbitration clause contained in the NIT.

AP/824/2023 is allowed and disposed of by appointing Mr. Pranab Chattopadhyay, 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 7th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

sg.