

FMAT 530 of 2021

**The Chief Executive Officer, Durgapur Steel Plant,
Steel Authority of India**

Vs.

M/s. M.R Enterprise

Mr. Sauvik Nandy, Sr. Adv

Mr. Subrata Santra

... For the Appellant

Mr. Shohini Chakraborty

Ms. Prajaaini Das

... For the Respondent

1. We have heard the learned counsel appearing for the parties.

2. The appeal filed by the appellant for stay of the suit on the ground of existing of an arbitration clause agreement between the parties was rejected by the learned trial court. Before invoking such arbitration clause, the procedure for conciliation is required to be followed, which has not been followed in the instant case. Admittedly, the procedure contemplated under the agreement stipulates that in case of a dispute and difference, the parties shall be referred to conciliation and in the event no agreement is arrived at and the disputes are not resolved in conciliation, the parties may refer the dispute to arbitration.

3. On such consideration, the order passed by the learned trial court cannot be interfered with in the appeal. However, having regard to the fact that

the parties have now agreed to initiate conciliation proceeding, we direct initiation of conciliation proceedings at the instance of the plaintiff within two weeks from date. In the said notice for conciliation, the plaintiff shall name a person who can act as a conciliator. However, in the event the parties are unable to mutually agree on the person to be appointed as a conciliator then it shall be presumed that conciliation has failed and the parties shall be at liberty to take appropriate steps in terms of clause 14 of the GCC.

4. The suit shall remain stayed for a period of two months or failure of conciliation, whichever is earlier.

5. In the event, the mutual negotiation is failed before the conciliator or the conciliator remains a non-starter, the plaintiff/opposite party/respondent can make an appropriate prayer in the suit for referring the dispute to arbitration and it would be open for the learned trial court to refer the subject matter of the suit to arbitration. It would also be open to the learned trial court to appoint an arbitrator with the consent of the parties.

6. In view of the above, the appeal being FMAT 530 of 2021 stands disposed of.

7. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)