

OCD-9

ORDER SHEET

AP-COM/29/2024

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

SP SINGLA CONSTRUCTIONS PVT. LTD.
Versus
GOVT. OF WEST BENGAL

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 15th January, 2024.

Appearance:

Ms. Tanvi Kakker, Adv.
Ms. Sampurna Chatterjee, Adv.
Mr. Aditya Mondal, Adv.
...for the petitioner

Ms. Noelle Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. P. Sinha, Ld. AOR
Mr. Shourya Samanta, Adv.
...for the respondent

The Court: A preliminary objection has been raised on behalf of the respondent which is required to be answered first.

Learned counsel appearing for the respondent submits that the petitioner has invoked the arbitration clause contained in an Agreement which is in the nature of an EPC dated 15th June, 2016 under which the petitioner was to construct a long span high level road bridge over the river Teesta near Haldibari in the District of Cooch Behar, West Bengal. Counsel submits that

the arbitration clause, namely, Clause 26.3 of the Agreement is preceded by a Conciliation Clause in Clause 26.2.

Learned counsel appearing for the petitioner submits that the petitioner has exhausted the Conciliation Clause and only thereafter has invoked the arbitration agreement.

Upon carefully perusing Clause 26.2 – “Conciliation”, it appears that the said clause contains several stages. Each of these stages also has exit routes but only upon the parties showing that the particular stage has either not worked out between the parties or has not been complied with. The clause contains at least 4 stages with the third stage containing several options on the dispute not being resolved between the parties. This stage also refers to a written terms of settlement within 30 days of the notice in writing referred to in Clause 26.1.1 which is the Dispute Resolution Clause.

The petitioner’s letter to the Engineering Chief of the respondent on 26th September, 2023 is on record. The petitioner invoked Clause 26.2 of the Agreement, i.e., the Conciliation clause for amicable settlement of the disputes between the parties. The respondent however failed to reply to this invocation. The petitioner, through learned counsel, hence claims that the petitioner has exhausted all the stages in Clause 26.2 and has only thereafter invoked the arbitration agreement by the notice dated 20th October, 2023.

The petitioner’s letter invoking Clause 26.2 is however only the first stage in the Conciliation process. The petitioner has to exhaust the four successive stages contained in the clause. An attempt to conciliate/mediate (words used

in the clause) and waiting for the respondent's reply in that regard will automatically not lead to the assumption that all the subsequent stages have been exhausted. Clause 26.2 enumerates the successive stages in detail and contemplates that the parties should exhaust all these stages before invoking arbitration under Clause 26.3. In fact, Clause 26.3.1 begins with *"Any dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration..."*.

Since the Court has come to the conclusion that the petitioner has not exhausted Clause 26.2 in its entirety, the preliminary objection raised on behalf of the respondent is accepted.

AP-COM/29/2024 is accordingly disposed of by directing the parties, with particular emphasis on the respondent before the Court, to initiate the process under Clause 26.2 within 22nd January, 2024 and stick to the timelines contained in the said clause.

Needless to say, the entire process of conciliation shall be completed within the timelines contained in the clause and without any further delay on the part of the respondent.

The petitioner's claim to arbitration will naturally not stand foreclosed.

(MOUSHUMI BHATTACHARYA, J.)