

OD-49

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

AP/14/2024
M/S BGM AND M NS JV BHABUPARA AND ORS
VS
EASTERN COALFIELDS LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 29th April, 2024.

Appearance:
Mr. Debottam Das, Adv.
Mr. Tirupati Mukherjee, Adv.
...for the petitioners.

Mr. Debnath Ghosh, Adv.
Mr. Syed Nurul Arefin, Adv.
Mr. R. Binayak, Adv.
...for the respondents.

The Court: This is an application under Section 11 of the Arbitration & Conciliation Act, 1996. The disputes between the parties arise out of an extraction and transportation agreement inter alia for removal of coal. Significantly, prior to the issuance of the agreement, the respondents had floated a tender process wherein the petitioner was found to be the successful bidder.

It is submitted on behalf of the petitioners that the respondents have illegally failed to honour their obligations under the agreement and banned the business of the petitioners without any lawful justification. On behalf of the respondents it is submitted that, in view of the defaults and the breach of obligation committed by the petitioners, the respondents were lawfully entitled to take necessary steps against the petitioners.

The relevant portion of the Arbitration Clause 13A of the agreement dated 14 December, 2021 is set out hereinbelow:

“13A.

Sole arbitration:

In the event of any question, dispute or difference arising under these terms & conditions or any condition contained in this contract or interpretation of the terms of, or in connection with this Contract (except as to any matter the decision of which is specially provided for by these conditions), the same shall be referred to the sole arbitration of a person, appointed to be the arbitrator by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be). The award of the arbitrator shall be final and binding on the parties of this Contract.

(a) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his/her award being set aside by the court for any reason, it shall be lawful for the Competent Authority of CIL/ CMD of Subsidiary Company (as the case may be) to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(b) It is further a term of this contract that no person other than the person appointed by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitrator at all. Subject as aforesaid, Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015, and the rules thereunder and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this clause. The venue of arbitration shall be the place from which the contract is issued.”

By a letter dated 4 June, 2021, each of the partners of the petitioner no.1 had unequivocally and unconditionally consented to resolve the disputes by way of arbitration in terms of the arrangement between the parties.

It is ex facie evident that there are live disputes between the parties arising out of the agreement which are also covered by the arbitration clause

In such circumstances, AP 14 of 2024 stands disposed of by appointing the Hon'ble Ms. Justice Indira Banerjee (Retired), Supreme Court of India as Sole Arbitrator, subject to the Arbitrator communicating her consent to the Registrar, Original Side of this Court within three weeks from date.

The Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP/14/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)