

OD-9

ORDER SHEET

AP/42/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

KOLAY CONSTRUCTION
VS
THE CHIEF ENGINEER, WEST BENGAL STATE
RURAL DEVELOPMENT AGENCY AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 10th September, 2024.

Appearance:
Mr. Siva Prosad Ghosh, Adv.
Ms. Srijani Mukherjee, Adv.
...for the petitioner

The Court: Despite service, none appears for the respondents.

The materials annexed to the present application indicate that the petitioner had approached the authorities as enumerated in Clause 24.1 and 25.1 of the General Conditions of Contract (GCC) between the parties, but to no avail due to lack of response from the said authorities. Having so failed, the petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

Although there is some doubt in the contention of the petitioner as to whether the parties actually intended to refer their disputes to arbitration, on a composite reading of Clauses 24.1 and 25.1 of the agreement between the parties (GCC), it transpires that upon adopting a liberal approach in consonance with the objects and purpose of the 1996 (which is to facilitate alternative dispute resolution), it may be deduced that the intention of the parties in substance was to refer their issues to arbitration.

Although the expression “settlement” has been used in Clause 24.1 while contemplating a referral to the competent authority, in a subsequent clause that is Clause 25, the caption “Arbitration” has been specifically used. Clause 25.1 starts with the phrase “If arbitration is allowed” therefore signifying that the spirit of the said clauses was a referral to arbitration. Since the reference to the designated authorities has failed and is also otherwise barred by the decision in *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*, reported at (2020) 20 SCC 760, as well as Section 12 of the Arbitration and Conciliation Act, 1996 since the referee authorities were employees of the respondent, and as the dispute otherwise comes within the ambit of the arbitration clauses, there cannot be any impediment in referring the disputes to arbitration.

Accordingly, AP /42/2024 is allowed, thereby appointing Mr. Partha Pratim Roy, Advocate (Mobile No. 9874135485), a member of the Bar Association, as the sole arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator. The learned

Arbitrator shall fix his own remuneration, in consultation with the parties and within the framework of 1996 Act, in particular the Fourth Schedule thereof.

It is made clear that all questions including the issue of arbitrability of the dispute are kept open for being decided by the Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)