

OCD-8

ORDER SHEET

AP-COM/426/2024

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

M/S. STA CC JV AND ANR.
VS
EASTERN COALFIELDS LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 28th February, 2024.

Appearance:

Mr. Subhabrata Datta, Adv.

Mr. Subhojit Seal, Adv.

Mr. Aranya Saha, Adv.

...for the petitioners

Mr. Debnath Ghosh, Adv.

Mr. Syed Nurul Arefin, Adv.

Mr. Syed Moyeenul Arefin, Adv.

Ms. Rashmi Binayak, Adv.

...for the respondents.

The Court: The petitioners seek appointment of an Arbitrator in the present application filed under Section 11 of The Arbitration and Conciliation Act, 1996.

The parties entered into an Agreement pursuant to a tender floated by the respondent. The letter of intent is of 10th December, 2021 and the respondent issued the work orders on 10th January, 2022. The petitioners, however, stopped the work and requested for foreclosure on certain disputes arising between the parties. The respondent thereafter terminated the

Agreement on 6th June, 2023 and issued a notice of debarment on 26th June, 2023.

The petitioners thereafter raised a notice of demand on 10th January, 2024 and invoked the arbitration clause in the Agreement on 17th January, 2024. The respondent replied on 24th February, 2024 disputing the arbitration clause but nominating its arbitrator.

The fact that there are disputes between the parties would be evident from the petitioners' claim for unpaid dues. The petitioners also approached the Writ Court seeking certain orders whereby the petitioners were directed to continue with the work. The Division Bench thereafter directed the petitioners to invoke the arbitration clause in the Agreement dated 31st May, 2021.

The arbitration clause being Clause 13(A) of the NIT provides for arbitration but under Clause (b) also provides for unilateral appointment by the competent authority of the respondent or the CMD of the subsidiary company. There is no doubt that the clause cannot survive or be sustained in the face of Section 12(5) of the 1996 Act read with the fifth and seventh Schedules thereto.

The Court hence proposes, as is authorised to do in a Section 11 Application, to appoint an Arbitrator.

AP-Com/426/2024 is allowed and disposed of by appointing Mr. Pinaki Chandra Ghosh, former Judge of the Supreme 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 29th February, 2024 along with the requisite details of the contact person of the petitioner.

The appointment is without prejudice to any of the rights and contentions of the parties before this Court.

The supplementary affidavit filed by the petitioners is taken on record.

(MOUSHUMI BHATTACHARYA, J.)