

ODC-28

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

AP-COM/440/2024

M/S SRI GANESH ENGINEERING WORKS
VS
UNION OF INDIA AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 27th August, 2024

Appearance:
Mr. Amitava Ghosh, Adv.
Mr. Tapas Kumar Dey, Adv.
...for petitioner.

Mr. Saubik Nandy, Adv.
Ms. Rashmi Bothra, Adv.
...for Union of India.

The Court:- Learned Counsel for the respondent seeks an adjournment on the plea that Counsel could not take instructions from their clients.

It transpires from the order dated August 21, 2024 that an adjournment was sought by Learned Counsel for the respondents on the said occasion as well, for similar reasons, due to which the matter was adjourned till today.

Expeditious disposal is the soul of arbitration, in particular, applications under Section 11 of the Arbitration and Conciliation Act, 1996. Hence, such prayer for further adjournment is refused.

Upon perusing the appropriate annexures to the application, it is clear that the dispute, sought to be raised by the petitioner by way of invocation of the arbitration clause in writing dated December 22, 2023, comes within clause 64

of the contract between the parties, which speaks about arbitration. Since the said clause envisages appointment of railway officers for the purpose of appointing Arbitrators, the same is squarely hit by Section 12 of the 1996 Act as well as the ratio laid down in the case of *Perkins Eastman Architects DPC & Anr.*, hence justifying the present approach by the petitioner under Section 11 of the said Act in view of lack of consensus on the appointment of arbitrator.

Since the dispute is also otherwise arbitrable and comes within the ambit of the arbitration clause of the agreement between the parties, there cannot be any hindrance in appointing an arbitrator to decide the disputes.

Accordingly, AP-COM/440/2024 is allowed, thereby appointing Justice Ashok Kumar Das Adhikari (retired) to be the sole Arbitrator to resolve the dispute between the parties, subject to a declaration being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said learned Arbitrator. The learned Arbitrator shall fix his own remuneration in consultation with the parties within the ambit of the 1996 Act and its Fourth Schedule.

(SABYASACHI BHATTACHARYYA, J.)

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