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ORDER SHEET
AP/195/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

ANDREW YULE AND COMPANY LIMITED
VS
SILIGURI ELECTRIC WORKS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 8th July, 2024.

Appearance:

Ms. Neelina Chatterjee, Adv.
Mr. Suvodeep Chakraborty, Adv.
. . .for the petitioner.

Mr. Devajyoti Barman, Adv.
Mr. Sanjukta Basu Mallick, Adv.
. . .for the respondent

The Court: Heard learned counsel for the parties. A preliminary objection is raised by learned counsel for the respondent.

There were three initial purchase orders between the parties, two of which were the subject matter of claim before the MSME council. Regarding the present claim of the petitioner, the same formed the basis of a counter claim filed by the present petitioner before the MSME council as well.

As such, a fresh reference to arbitration, it is contended, is not maintainable.

Upon hearing learned counsel for the parties, it transpires that the petitioner has sought a fresh reference regarding its claim regarding the third purchase order on the premise that the counter claim taken out by the petitioner

for the self-same claim was not decided by the Arbitrator, that is the MSME Facilitation Council.

However, since the petitioner submitted to the jurisdiction of the MSME Council as the arbitral tribunal by preferring a counter claim on the self-same cause of action which is the premise of the present claim, the petitioner is debarred by the principle of *res judicata* from urging the same issue afresh in a fresh reference to arbitration.

In the event the petitioner was aggrieved by the non-consideration of its counter claim by the arbitral tribunal, the remedy of the petitioner lay in a challenge under Section 34 of the 1996 Act. Alternatively, the petitioner could have added the component of challenge sought to be raised now in the pending challenges under Section 34, which arise out of the self-same cause of action.

In such view of the matter, the present application under Section 11 of the 1996 Act seeking a fresh appointment of arbitrator is not maintainable in the eye of law.

Accordingly, AP 195 of 2021 is dismissed as not maintainable. It is, however, made it clear that nothing in this order shall preclude the petitioner from urging the points taken herein on merits in the pending applications under Section 34 of the 1996 Act and/or to prefer a fresh challenge under the said provision subject, of course, to the law of limitation.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

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