

OD-3

ORDER SHEET

AP/32/2022

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

M/S. S. D. ENTERPRISE
Versus
NTPC LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 28th February, 2024.

Appearance:

Mr. Shuvasish Sengupta, Adv.

Ms. Taharima Khatun, Adv.

Mr. Jayanta Sengupta, Adv.

Mr. Uttam Kr. Mandal, Adv.

The Court: The present application is for appointment of an Arbitrator under Section 11 of The Arbitration and Conciliation Act, 1996.

The dispute arises out of an arbitration clause contained in the General Terms and Conditions for Award of O&M Contract which was executed between the petitioner and the respondent. The respondent gave the contract to the petitioner for shifting of mill rejects in coal yard, Farakka. Admittedly, the petitioner performed the contract but disputes arose when the petitioner made demands for payment in respect of purchase orders including of 24th May, 2017 followed up by other purchase orders. This would be clear from the affidavit-in-opposition of the respondent which admits by way of a mail dated 10th October, 2020 that the respondent deducted Rs.45.75 lakhs and/or

recovered the same amount from the petitioner's pending bills including the security deposit pursuant to a recommendation made in a Vigilance Case.

The deductions/recoveries made by the respondent would also appear from the petitioner's notice of invocation dated 22nd December, 2021 which mentions the P.O. Number dated 24th May, 2017 but also the fact that the respondent deducted money against bills raised by the petitioner in connection with other P.O.s. The respondent did not reply to this letter.

The disputes between the parties is evident and is at several levels. Apart from the deductions/recoveries made by the respondent, there may also be a question of the particular purchase order which forms the basis of the respondent's objection to the application. There is also a requirement of identifying the agreement which governs relationship between the parties.

Whatever may be the dispute, the Arbitrator is fully authorised to decide and adjudicate these disputes.

AP/32/2022 is accordingly allowed and disposed of by appointing Mr. Amritam Mandal, counsel, 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 petitioners' advocate-on-record shall communicate this order on the learned Arbitrator by 1st March, 2024 along with the requisite details of the contact person of the petitioners.

(MOUSHUMI BHATTACHARYA, J.)