

OCD-49

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

AP/301/2021

rites limited
vs
INDIAN INSTITUTE OF TECHNOLOGY KHARAGPUR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 22nd April, 2024.

Appearance:
Mr. Rishav Banerjee, Adv.
Mr. S. Gole, Adv.
Mr. A. K. Awasthi, Adv.

The Court: The petitioner is a Government of India Enterprise and a company incorporated under the Companies Act, 1956. The respondent, Indian Institute of Technology Kharagpur (IIT) is a corporate established by and under the Institute of Technology Act, 1961.

By a Memorandum of Understanding dated 29th August, 2008, the petitioner undertook certain construction activities for the respondent. Clause 10 of the agreement dated, inter alia, provided as follows:

“10. ARBITRATION:

a. In the case of Dispute or difference arising between the RITES AND IIT relating to any matter arising out of or connected with the Agreement, such dispute or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996 with all up-to-date amendments and Rules made there under. The Arbitral Tribunal shall consist of a Sole Arbitrator to be appointed by agreement between the parties and failing such agreement, by the Chairman/ Standing Conference of Public Enterprises.

- b. The decision of the Sole Arbitrator shall be final and binding upon both the parties. The Cost and expenses of Arbitration proceedings will be paid by the Parties as determined by the Arbitrator. However, the expenses incurred by each party in connection with the preparation, presentation etc. of its proceedings shall be borne by each party itself.*
- c) Performance under this Agreement shall continue during the Arbitration Proceedings and payments due to RITES BY IIT shall not be withheld unless they are the subject matter of the Arbitration proceedings.*
- d) The Arbitrator shall adjudicate on only such disputes as are referred to him in the Claim Statement and give separate award against each dispute and claim referred to him along with reasons for the award.*
- e) The fees payable to the Arbitrator shall be paid equally by both the Parties.*
- f) The Venue of the Arbitration shall be such place as may be fixed by the Arbitrator, in the sole discretion.*
- g) The demand for Arbitration by either Party on the other Party in respect of any claims should be made within the Time Limit for Validity of the Agreement Any demand for Arbitration beyond this time limit shall be treated as time barred and the Party on whom the claims are made shall be discharged and released of all liabilities under this Agreement in respect of such Claims.”*

Pursuant to the aforesaid agreement, disputes and differences have arisen by and between the parties.

By a letter dated 16th July, 2020, the petitioner had in terms of the arbitration clause referred the matter to the Chairman, Standing Committee Conference of Public Enterprises.

A further communication dated 11th September, 2020, had also been addressed by the petitioner. By a letter dated October 13, 2020, the petitioner was informed by the Chairman, Standing Conference of Public Enterprises (SCOPE) that the respondent had not given their consent. As such, there can be no adjudication or mediation of the disputes between the parties.

The respondent is represented and unequivocally agrees to SCOPE acting in terms of the arbitration clause and adjudicating upon the differences between the parties. On behalf of the respondent, it is submitted that the entire amount has been paid and there is nothing due and payable to the petitioner. Such fact is disputed by the petitioner.

In view of the consent recorded by the respondent, AP/301/2021 stands disposed of by directing the Standing Conference of Public Enterprises to adjudicate upon the disputes between the parties.

Liberty is granted to the parties to file an application under Section 11 of the Arbitration and Conciliation Act, 1996, if the subsequent events so require.

(RAVI KRISHAN KAPUR, J.)

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