

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

AP-COM/627/2024
GLOBAL VECTRA HELICORP LTD.
VS
FLYING TRAINING INSTITUTE (FTI)

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 21st August, 2024

Appearance:

Mr. Sayan Dutta, Adv.
Ms. Reshma Chatterjee, Adv.
Ms. Tanushree Bag, Adv.
Mr. S. Ganguly, Adv.
. . .for the petitioner.

Ms. Noelle Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Arindam Mandal, Adv.
Mr. Shourya Samanta, Adv.
. . .for the respondent.

The Court : Learned counsel for the petitioner contends that the disputes now sought to be raised by the petitioner come within the purview of Clause 14 of the agreement for hiring-in of a twin engine air conditioned helicopter on wet lease between the parties.

Learned counsel for the respondent, at the outset, takes three objections to the maintainability of the present application.

First, the application has been captioned as one under Section 11(2) of the Arbitration & Conciliation Act, 1996, which does not contemplate any appointment of Arbitrator by the Court as such.

Secondly, in terms of the relevant arbitration clause, that is, Clause 14.1, the reference to arbitration has mandatorily to be preceded by an attempt

at amicable settlement through consultation/discussion between the parties, which has not been done in the present case.

Learned counsel cites an unreported judgment of a co-ordinate Bench in the matter of *SP Singla Constructions Private Limited versus Government of West Bengal* where the learned Single Judge observed that unless the stages contained in the arbitration clause which are to be undergone prior to arbitration are exhausted, there cannot be any appointment of Arbitrator under Section 11.

Thirdly, learned counsel for the respondent contends that the Proviso to Section 12(5) stipulates that the parties may, subsequent to disputes having arisen between them, waive the applicability of Sub-section(5) by an express agreement in writing. Thus, the Proviso carves out an exception to Sub-section(5) of Section 12, which stipulates that any person whose relationship with the parties or counsel for the subject-matter of the dispute falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an Arbitrator. In view of the express waiver by the petitioner of the said rigour, there is no bar to the Secretary, Law Department, Government of West Bengal (the Arbitrator named by designation) acting as the Arbitrator in terms of the arbitration clause. In support of the contention that for satisfaction of the Proviso, no formal legal document need be entered into, learned counsel cites a Division Bench judgment of the Madras High Court reported at *2021 SCC Online Mad 2892*.

Learned counsel for the petitioner, in reply, seeks liberty to amend the caption of the cause-title to the present application to incorporate the appropriate Sub-section of Section 11.

Secondly, learned counsel for the petitioner relies on documents annexed to the present petition, particularly from pages 36 to 44 thereof, to argue that

sufficient attempts were made by the petitioner to amicably settle the dispute by a process of discussion. Only after the same failed, the present application has been filed.

With regard to the last objection, it is submitted that the statement made in the e-mail sent by the communication made by the petitioner on September 7, 2023 does not *per se* comprise of an express waiver of Sub-section (5) of Section 12.

At the outset, it may be recorded that the first objection taken by the respondent is turned down, being hyper-technical, by granting liberty to the learned advocate-on-record for the petitioner to carry out the necessary amendment to the cause-title of the present application by incorporating the appropriate Sub-section of Section 11.

Such amendment shall be carried out during the course of the day.

Insofar as the second objection is concerned, the same is also turned down, since the correspondence extensively made by the petitioner and between the parties prior to resorting to Section 11 are sufficient to indicate that the pre-requirement of attempt to amicably settle the dispute through consultation/discussion has sufficiently been complied with by the petitioner.

However, insofar as the last objection is concerned, the same cannot but be upheld.

In its communication to the respondent dated September 7, 2023, the petitioner categorically mentioned that in case the issue remained unresolved, the petitioner would like to go into arbitration and take the case up with the Secretary, Law Department, Government of West Bengal for an amicable solution. More importantly, in the next sentence of paragraph no.8 of the said communication, the petitioner wrote that the Secretary, Law Department,

Government of West Bengal *as per Clause 14* of the signed agreement shall act as the sole Arbitrator.

In view of such categorical statement, it is evident that the petitioner expressly waived the applicability of Section 12(5) of the 1996 Act in writing and, as such, is required to go before the Arbitrator named by designation in the arbitration clause, that is, the Secretary, Law Department, Government of West Bengal for the purpose of resolving the dispute between the parties.

Accordingly, AP-COM/627/2024 is dismissed in the light of the above observations, by granting liberty to the petitioner to refer the dispute between the parties to the Secretary, Law Department, Government of West Bengal in terms of Clause 14 of the agreement between the parties for the purpose of resolution of the dispute by the process of arbitration.

No order as to costs.

Needless to say, none of the above observations have touched the merits of the disputes between the parties.

Urgent certified website copies of this order be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)