

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

AP-COM/637/2024

JAI BALAJI INDUSTRIES LIMITED
VS
MR SARAD AGARWAL

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 9th July, 2024

Appearance:
Mr. Pranit Bag, Adv.
Ms. Meenakshi Mannot, Adv.
Mr. A. Dutta, Adv.
...for the petitioner

Mr. Dibashis Basu, Adv.
...for the respondent

The Court:- The present application under Section 11 of the Arbitration and Conciliation Act, 1996 arises out of a single composite notice under Section 21 of the said Act, invoking the arbitration clause in several work orders and letters of intent.

It is argued by learned counsel for the petitioner that although different work orders and letters of intent were issued by the petitioner to the respondent, the purpose for which those were issued is the same major project.

That apart, it is contended that the arbitration clauses in each of the work orders and the letters of intent are similar verbatim.

It is next argued that since the work orders and letters of intent emanate from the self-same series of transactions, a composite and single reference would serve the ends of justice.

Learned counsel, in support of such contention, cites a judgment of a learned Single Judge of the Delhi High Court in the matter of *HFCL Limited vs. Bharat Broadband Network Limited* where it was held that it was evident on perusal of the arbitration clauses of the tender and arbitration clause of the work orders therein that those are verbatim, in which view, it was held that a single reference would suffice.

Learned counsel also cites a judgment of a learned Single Judge of the Delhi High Court in the matter of *Gammon India Ltd. and Another vs. National Highways Authority of India*, where, while considering a challenge under Section 34 of the 1996 Act, it was held, inter alia, that in a petition seeking appointment of an Arbitrator/constitution of an arbitral tribunal, parties ought to disclose if any tribunal already stands constituted for adjudication of the claims of either party arising out of the same contract or the same series of contracts. If such a tribunal has already been constituted, it was held that an endeavour can be made by the arbitral institution or the High Court under Section 11, to refer the matter to the same tribunal or a single tribunal in order to avoid conflicting and irreconcilable findings.

Learned counsel for the respondent points out at the outset that the surname of the respondent ought to be have been mentioned as “Chand” instead of “Agarwal”.

Leave is granted to the learned advocate-on-record for the petitioner to carry out such consequential amendment to the cause title of the application.

The meat of the dispute pertains to whether a single reference can be made in respect of different work orders in the particular circumstances of the present case.

A bare perusal of the arbitration clauses in each of the work orders as well as letters of intent shows that the language thereof is identical verbatim. All the said clauses, in unison, provide that in the event of “any dispute and difference arising by and between” the parties, the same shall be referred to a sole arbitrator.

Although the clauses envisage the arbitrator to be a person to be appointed by the JBII, since such provision vitiates the premise of Section 12 of the 1996 Act, the petitioner has rightly approached this Court, since there was no consensus on the name of the Arbitrator, for appointment of a sole Arbitrator to resolve the disputes between the parties.

I find that even apart from the language of the arbitration clauses in each of the documents being identical, all of those emanate from a single major project in respect of an ongoing new Sinter Plant Project.

Moreover, all the said letters of intent and work orders form different components of the same series of transactions with a common end in view and, borrowing the logic of the Delhi High Court in *Gammon India Ltd. and Another vs. National Highways Authority of India*, there would be a chance of conflicting and irreconcilable findings if different arbitral references are made, since the premise of the dispute is the same, as indicated in the composite notice under Section 21 of the 1996 Act.

In such view of the matter, there cannot be any manner of doubt that although the disputes emanate from different work orders and letters of intent, the premise of the dispute between the parties is same, and the parties are also identical, and the dispute arises from the same major transaction.

Even otherwise, the dispute is inherently arbitrable and the specific dispute raised herein falls within the ambit of the arbitration clause.

Accordingly, AP-COM/637/2024 is allowed, thereby appointing Mr. Rupak Ghosh, a member of the Bar Library Club, as the sole Arbitrator to resolve the dispute between the parties, subject to obtaining disclosure from the said learned Arbitrator under Section 12 of the 1996 Act. The Arbitrator shall fix his own remuneration in consonance with the provisions of the 1996 Act, read with its Schedules.

(SABYASACHI BHATTACHARYYA, J.)