

ORDER SHEET

AP-COM/639/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE

RAINBOW INFRASTRUCTURE PRIVATE LIMITED

VS

DTC PROJECTS PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 4th November, 2024.

Appearance:

Mr. Ritoban Sarkar, Adv.

*Mr. Rajib Ghosh, Adv.
.... for the petitioner*

*Mr. Subhrajyoti Mukherjee, Adv.
Mr. Snehashis Sen, Adv.
...for the respondent*

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner's prayer is in respect of disputes arising out of work orders dated 28th October, 2017, 17th November, 2017, 29th December, 2017 and 5th February, 2018. According to the petitioner, the work orders arise out of the same project and they are intrinsically connected. Hence a composite order of reference in respect of the disputes should be passed. Learned advocate for the petitioner draws the attention of the Court to Clause 42 of one of the work orders and it is submitted that same clause has been

inserted in all the respective work orders which are all subject matters before this Court.

Upon reading the said arbitration clause, this court finds that an in-house mechanism has been provided for settlement of the disputes amicably and in case such dispute mechanism fails, it is agreed that arbitration procedure shall be determined by the arbitrator and the costs of arbitration shall be shared by the developer and the contractor. The parties undertook to abide and remain bound by the award of the arbitrator so rendered. The second limb of clause 42 which is page 17 of the application indicates that the parties had agreed that there would be an arbitration procedure, in the event the contractor does not agree with the decision of the project manager. The clause is quoted below:-

“42.Arbitration- All disputes and differences of any kind whatsoever arising out of or in connection with this Contract as also with regard to the implementation, meaning, interpretation or implications of the various clauses of the Contract and those of the Contract Documents or in respect of any other matter or thing arising out of or relating to the development and construction of the Project whether during the progress of the work or after their completion shall be communicated by the Contractor in writing to the Project Manager and all possible efforts would be made by the Parties to sort out and resolve all such matters of controversy, disputes and differences, amicably with due dispatch and effective priority. In case, the Contractor and the Developer Representative/Project Manager were unable to resolve such issues amicably latest within 10 working days from the date of receipt of such communication by the Project Manager, in such eventuality the Developer/Project Manager shall take their decision thereon without any undue delay and preferably within next 14 working days and there upon they shall notify in writing such decision to the Contractor within next 7 working days. Decisions, directions

and clarifications pertaining to measurements, drawings and certificates taken by the DTC Projects Pvt. Ltd. shall be final and binding on the Parties.

The jurisdiction and arbitration venue shall be at Kolkata. The procedure for the arbitration shall be determined by the Arbitrator. Costs of such arbitration shall be equally shared between the Developer and the Contractor. The Parties undertake to abide and remain bound by the award of the Arbitrator so rendered.”

The petitioner invoked the arbitration clause by a letter dated 18th December, 2023 and set forth the claim. The respondent replied to such letter on 17th January, 2024. The petitioner suggested the name of a learned advocate as per their choice to be appointed as an arbitrator, which was refused by the respondent and in the alternative, the respondent suggested another name. The parties did not agree to each other nominations.

Parties agree that there are arbitration clauses in all the work orders. The work orders are intrinsically connected and arise out of the same project. As such, a composite reference would be beneficial for the interest of the parties.

The Court directs Mr. Sabyasachi Chowdhury, learned Advocate to be appointed as learned Arbitrator to arbitrate the disputes arising out of the aforesaid work orders. The objections which are available to the respondents are left open to be raised before the learned Arbitrator. All points including the point of limitation and the objections to the claim raised by Mr. Mukherjee, as also the claim for damages against the petitioner, can be raised in the arbitration proceeding. Learned Arbitrator is being appointed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

Learned Advocate shall be at liberty to fix his own remuneration as per the mandate of the law.

AP-COM 639 of 2024 is disposed of accordingly.

All parties are to act on the basis of the server copy of the order.

(SHAMPA SARKAR, J.)

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