

OCD 6

ORDER SHEET
AP-COM/641/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S CBPL SBCC JV
VS
THE UNION OF INDIA AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 14th August, 2024.

Appearance:
Ms. Manali Bose, Adv.
Mr. Suvam Sinha, Adv.
...for the petitioner

Mr. Swatarup Banerjee, Adv.
Mr. Rivu Dutta, Adv.
Mr. Rhitam Chatterjee, Adv.
...for the respondents

The Court: Affidavit of service filed today be kept on record.

The petitioner seeks the appointment of an Arbitrator. Learned counsel for the petitioner argues that despite a request for such appointment, no concurrence came from the respondents, for which the present application has been filed.

Learned counsel places reliance on the arbitration clause in the agreement between the parties.

Learned counsel appearing for the respondents raises an objection regarding the maintainability of the claim itself.

Since it is well-settled that all questions regarding the maintainability of claims and as to jurisdiction of Arbitrator are best left for the Arbitral Tribunal itself to decide and cannot be adjudicated at the Section 11 stage, and in view of the fact that the dispute now arisen between the parties comes within the ambit of the arbitration clause and the dispute is otherwise arbitrable, I do not find any impediment in appointing an Arbitrator to resolve the dispute between the parties.

Needless to say, all objections and questions raised by the parties shall be kept open to be decided by the Arbitrator.

As per the agreement between the parties, since the Arbitral Tribunal was to comprise of three members, AP-COM/641/2024 is allowed, thereby appointing Justice Alope Chakrabarti (retired) as the nominee-member of the petitioner and Justice Subrata Talukdar (retired) as the nominee-member of the respondents. The said two members shall agree upon the third member to constitute the Arbitral Tribunal.

It is made clear that the above appointment shall be subject to declarations being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said nominated Arbitrators and the third Arbitrator to be appointed by the said two nominee-members. The Arbitral Tribunal shall fix its own fees in consultation with the parties and within the framework of the Arbitration and Conciliation Act, 1996 and the Fourth Schedule thereto.

(SABYASACHI BHATTACHARYYA, J.)