

OCD 29

ORDER SHEET
AP-COM/659/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

GAURAV WORLDWIDE TRADING PVT LTD.
VS
THE WEST BENGAL SMALL INDUSTRIES
DEVELOPMENT CORPORATION LTD.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 27th August, 2024.

Appearance:

Mr. Ritoban Sarkar, Adv.

Mr. Sagnik Basu, Adv.

Mr. Soupayan S. Roy, Adv.

. . .for the petitioner.

Mr. Debabrata Banerjee, Adv.

Mr. Mahendra Prasad Gupta, Adv.

Mr. Hemanta Kumar Das, Adv.

. . .for the respondent no.1.

The Court: Learned counsel for the petitioner argues that in terms of Clause 17.0 of the agreement between the parties, any dispute arising in connection with the interpretation or implementation of the terms of the agreement shall be subject to arbitration. As per the said clause, the Managing Director, WBSIDCL (respondent) or his nominee shall be the sole Arbitrator to whom a request in writing shall be made by the aggrieved party within thirty days of the dispute.

It is contended that the said clause is hit by the principles of Section 12 of the Arbitration and Conciliation Act, 1996 and several judgments of the Apex

Court, including the case of *Perkins Eastman Architects DPC & Anr.*, which prohibit an employee or interested person of one of the parties being appointed or be a part of the appointment process of the Arbitrator.

Accordingly, a notice under Section 21 of the said Act was issued by the petitioner seeking the appointment of a different Arbitrator, which was turned down by written reply by the respondent, prompting the petitioner to prefer the instant application under Section 11 of the 1996 Act.

Learned counsel for the respondent submits that the provisions of Section 11(6) of the 1996 Act have not been complied with. Placing reliance on the written communication dated March 20, 2024 made by the respondent, it is argued that in consonance with the provisions of the arbitration clause, an Arbitrator was already named by the Managing Director of the respondent. As such, the present application should be rejected.

It is well settled that the employee of a party and/or any interested person of one of the parties is incapacitated from becoming an Arbitrator or appointing an Arbitrator. Also, Section 12 of the 1996 Act prohibits any interested party from taking up the assignment or, by necessary implication, appointing an Arbitrator as well.

Thus, the stand taken by the respondent is contrary to law. Since the petitioner has already invoked the Arbitration Clause by issuance of notice under Section 21 of the 1996 Act, the receipt of which has been admitted by issuing a reply thereto in writing by the respondent, there cannot be any impediment in appointing an Arbitrator due to lack of concurrence between the parties on such appointment.

Also, the disputes sought to be raised come within the ambit of the Arbitration Clause and the issue in dispute is also arbitrable in principal.

Accordingly, AP-COM 659 of 2024 is allowed on contest, thereby appointing Justice Prasenjit Mandal (retired) as the sole Arbitrator to resolve the dispute between the parties, subject to a declaration under Section 12 of the 1996 Act being obtained from the said Arbitrator. The learned Arbitrator shall fix his own remuneration in consultation with the parties and within the purview of the 1996 Act as well as the Fourth Schedule thereof.

(SABYASACHI BHATTACHARYYA, J.)

SP/