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

AP-COM No.694 of 2024

M/S DURGAPUR CORPORATION PVT LTD
VS
SRI GOURI SHANKER CHOUBEY

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 19th September, 2024.

Appearance:
Mr. Tanay Agarwal, Adv.
Mr. Chitresh Saraogi, Adv.
. . .for the petitioner.

Mr. K. Thaker, Adv.
. . .for the respondent.

The Court: The present application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the 1996 Act") was argued along with AP-COM No.693 of 2024.

Whereas in AP-COM No. 693 of 2024, the arbitration clause contemplated the jurisdiction of the arbitration to be in Kolkata, West Bengal, the arbitration clause in the agreement from which the present matter arises, that is Clause 13 of the agreement, provides that the arbitration proceedings shall be held at Kolkata, West Bengal.

The said Clause is set out below:

“13. ARBITRATION:

Any disputes or differences arising under or in connection with or regarding the interpretation of this Agreement, which cannot be settled by mutual discussion shall be settled by Arbitration by the Arbitral Tribunal and in accordance with the provisions of the Arbitration and Conciliation Act 1996. The Arbitration proceedings shall be held at Kolkata, West Bengal and shall be conducted in English language. The arbitration award will be final and will be binding on the parties.”

The short backdrop of the case is as follows:

The respondent approached the petitioner in respect of the respondent's Iron Ore Mines situated in Nangalsila, in Mayurbhanj at Orissa. A joint venture agreement was entered into between the parties on May 29, 2019. In terms of the said agreement, a Power of Attorney was to be executed by the respondent in favour of any Director or authorized representative of the petitioner and it was also for the respondent to enter into a separate agreement with the said Power of Attorney holder, entrusting the latter with raising activities or operations in respect of excavation of iron ore from the respondent's mines.

On the same date, that is on May 29, 2019, a Power of Attorney was executed by the respondent in favour of one Mr. Bhagawati Prasad Todi, a nominee of the petitioner, and a separate agreement was entered into by the

respondent with one M/s Adhunik Corporation Limited for conducting raising activities in the mines.

The respondent terminated the agreement with M/s Adhunik Corporation Limited on December 4, 2023 and reiterated the same in a letter dated February 13, 2024. Thereafter the petitioner and M/s Adhunik Corporation Limited filed separate applications under Section 9 of the 1996 Act, which are still pending, orders having been passed therein from time to time.

Subsequently, the petitioner invoked the arbitration clause by issuance of a notice under Section 21 of the 1996.

M/s Adhunik Corporation Limited also issued a separate notice invoking arbitration on the strength of its agreement with the present respondent. AP-COM No.693 of 2024 arose out of the agreement between M/s Adhunik Corporation Limited and the respondent whereas the present application has been filed by the petitioner in respect of its joint venture agreement with the respondent.

Learned counsel appearing for the petitioner in both the matters seeks a composite reference of the disputes since, according to the petitioner, the two agreements, along with the Power of Attorney, comprise of the same set of transactions and the agreements and Power of Attorney were entered into on the self-same date in respect of the same subject-matter.

Whereas learned counsel for the respondent does not oppose in principle a reference to arbitration on the basis of Clause 13 of the joint venture agreement between the petitioner and the respondent, the respondent objects

to a composite reference on the ground that the agreements do not refer to each other and contain separate arbitration clauses. The difference in language between the arbitration clauses and the scope of the agreements, it is argued, obviates any scope of composite reference.

AP-COM No.693 of 2024 has been decided separately by a judgment and order passed earlier today, in view of the respondent, apart from opposing a composite reference, having raised an objection as to territorial jurisdiction of this Court in AP-COM No.693 of 2024.

By the judgment passed in AP-COM No.693 of 2024, a learned Arbitrator has been appointed and it has been left open to the learned Arbitrator to decide whether the disputes arising out of the agreements between the present petitioner and the respondent as well as that between M/s Adhunik Corporation Limited and the respondent should be clubbed together and taken up as a composite reference or otherwise.

In the present case, since there is no dispute as to arbitrability of the issues involved and to the appointment of a learned Arbitrator, there is no impediment otherwise to appoint an Arbitrator.

However, keeping in view the observations made in AP-COM No.693 of 2024, leaving it open to the learned Arbitrator to decide as to whether the two disputes should be clubbed together and taken up as a composite reference, it would only be appropriate if the same learned Arbitrator is appointed in both the matters.

Accordingly, AP-COM No.694 of 2024 is allowed, thereby appointing Justice Indira Banerjee, a retired Judge of the Supreme Court, as the sole Arbitrator to resolve the dispute between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 being obtained from the said learned Arbitrator. The learned Arbitrator shall fix her own remuneration in terms of the 1996 Act and its Fourth Schedule.

It is made clear that it will be open to the learned Arbitrator to decide whether the disputes arising out of the agreement between M/s Adhunik Corporation Limited and the respondent and the present agreement should be clubbed together and taken up as a composite reference or otherwise. Needless to say, this Court has not touched upon the merits of any of the contentions of the parties, apart from those relating to this Court having jurisdiction to take up the Section 11 application, and it will be open to the parties to argue on all issues before the learned arbitrator.

Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(SABYASACHI BHATTACHARYYA, J.)