

ORDER SHEET

AP/133/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

MANAS NEOGY
VS
THE MEMBER SECRETARY, DISTRICT HEALTH AND
FAMILY WELFARE SAMITY, HOOGHLY AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 10th September, 2024.

Appearance:

Mr. Souri Ghosal, Adv.
Mr. Prasayan Mukherjee, Adv.
...for the petitioner

Ms. Noelle Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Aishik Chakraborty, Adv.
Mr. Arindam Mandal, Adv.
...for the respondent State

The Court: Learned counsel for the respondent, at the outset, takes an objection as to the arbitration clause having not been invoked in terms of either Section 11(3) or under Section 21 of the Arbitration and Conciliation Act, 1996 before moving the present application.

The last similar notice out of the three which have been annexed to the present application indicates that the petitioner wrote to the respondent stating that attempts at amicable settlement under Clause 8.1 of the agreement between the parties have failed. However, thereafter the petitioner

apparently lost track and merely reiterated its claim of financial loss and other losses and gave a warning that in view of the amicable settlement having failed, the petitioner is now left with no other recourse but “to seek relief before appropriate legal forum”.

Upon hearing learned counsel for the parties, it transpires that the objection taken by the respondent is justified. The statements made in the notices issued by the petitioner to the respondent, at no place, disclose any invocation of the arbitration clause i.e., Clause 8.2 and/or any effort to seek appointment in specific terms. Insofar as the notices in question are concerned, they merely reiterate that in view of the amicable settlement having failed, the petitioner’s advocate’s instructions are to take appropriate steps in law for appointment of Arbitrator in terms of Article 8.2 of the said agreement.

However, the mere instruction to take appropriate steps cannot tantamount to actual steps having been taken under Section 21 or Section 11(3) by issuance of a specific notice invoking the arbitration clause and seeking an appointment of Arbitrator.

Since prior request as indicated above is a *sine qua non* for preferring an application under Section 11, which has not been made in the present case, the present application fails.

Accordingly, AP/133/2024 is dismissed as not maintainable, being premature. However, nothing in this order shall debar the petitioner from issuing an appropriate notice under Section 11(3) and/or Section 21 of the Arbitration and Conciliation Act, 1996 seeking invocation of the arbitration clause and appointment of an Arbitrator and thereafter, upon expiry of the

statutory period of 30 days from receipt of the said notice by the respondents, to prefer a fresh application under Section 11 of the 1996 Act.

(SABYASACHI BHATTACHARYYA, J.)

bp/R.Bhar