

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP/382/2023

M/S RGM INTERNATIONAL INDIA PVT LIMITED
VS
THE UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 8th January, 2024.

Appearance:

Mr. Debasish Chattopadhyay, Adv.

Mr. Loknath Paul, Adv.

Mr. Tirthankar Basu, Adv.

...for the petitioner

The Court: No one represents the respondents even though learned counsel was present on at least three of the previous occasions. The dispute between the parties arises out of an Agreement dated 18th January, 2022 by which the petitioner was engaged by the respondent Railways for repair of a boundary wall of the Eastern Railways from Sealdah to Ballygunge Railway Stations. The petitioner was to complete the work in three years i.e., by 18th January, 2025. The Agreement contains an Arbitration clause which was to be governed by the General Conditions of Contract – July, 2020.

The petitioner waived the applicability of Section 12(5) of the 1996 Act with regard to unilateral appointments by its letter dated 22nd October, 2022/ 3rd November, 2022. The letter contains an annexure which specifically records the waiver.

The respondent Eastern Railway proceeded to appoint one Mr. Sunny Sharma, Dy. CMM/Sales of the Eastern Railway on 7th February, 2023 as the Arbitrator. The petitioner wrote to the respondents on 1st April, 2023, that is, after two months, stating that Mr. Sharma failed to take any steps pursuant to the appointment causing delay in the proceedings. The letter of the respondents to Mr. Sharma dated 12th April, 2023 also records that Mr. Sharma did not issue any notices of invitation of Arbitration and has, therefore, contributed to the delay.

Learned counsel appearing for the petitioner submits that the question of waiver of the applicability of Section 12(5) of the 1996 Act is not relevant any more since the respondents/their nominated Arbitrator has failed to take any steps in pursuance of the petitioner's waiver which was communicated to the respondents on 22nd October/3rd November, 2022.

Apart from the unilaterality of the relevant clause of the GCC, namely Clause 64(3)(a) and (b), it is undisputed that the respondents/nominated Arbitrator failed to take any steps from 7th February, 2023 despite the respondents' letter written to the Arbitrator on 12th April, 2023. We are now in January, 2024 and it is inconceivable that the Arbitration should remain pending, even uninitiated, due to the delay and laches attributable to the Arbitrator appointed by the Railways. The Eastern Railways has not shown any urgency in the matter in terms of following up with the letter dated 12th April, 2023. The dispute between the parties is evident.

The petitioner complains of premature termination of the Agreement; the termination is of 9th July, 2022. The petitioner also complains of non-payment

of the invoices raised by the petitioner and the Railways invoking the bank guaranteed furnished by the petitioner. The claim amounts to approximately Rs. 60 lakhs. Since by reason of the existing dispute between the parties and the fact that the dispute is relatable to the Arbitration clause in GCC, AP/382/2023 is accordingly allowed and disposed of by appointing Mr. Sarosij Dasgupta, counsel, to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 11th January, 2024 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)