

OCD 20

ORDER SHEET
AP-COM/819/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

NABA KUMAR BHUNIA
VS
THE CHAIRMAN GHATAL MUNICIPALITY

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 24th September, 2024.

Appearance:
Ms. Hashnuhana Chakraborty, Adv.
Ms. Neelina Chatterjee, Adv.
Ms. Ahana Bhattacharyya, Adv.
. . .for the petitioner.

Mr. Shyamal Chakraborty, Adv.
Mr. Manabendra Thakur, Adv.
Mr. Swarup Kumar Ghose, Adv.
. . .for the respondent.

The Court: Affidavit of service filed in Court be taken on record.

Learned counsel for the petitioner seeks a reference to arbitration in terms of Clause 25 of the tender document between the parties. The scope of the dispute is that the petitioner worked for the respondent but was not paid. Subsequently, the contract was terminated by the respondent, according to the petitioner illegally.

The petitioner invoked the arbitration clause by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. Upon the same failing to elicit any response, the present application has been filed under Section 11 of the said Act.

Learned counsel for the respondent takes three objections to the present application. First, it is submitted that the Chairman, Ghatal Municipality has been impleaded as respondent whereas the agreement was with the Ghatal Municipality itself.

Secondly, it is submitted that there is no dispute existing between the parties, since the respondent, after issuing two show cause notices to the petitioner, on failure of the petitioner to complete the petitioner's part of the contract, terminated the agreement.

Thirdly, it is argued that the arbitration clause contemplates a named Arbitrator.

Insofar as the first objection is concerned, it transpires that the tender was floated by the Chairman of the Ghatal Municipality. The signatory to the work order was also the Chairman.

Hence, at all stages of the bundle of facts which give rise to the cause of action, it is the Chairman who acted on behalf of the Ghatal Municipality.

Even the relevant communications took place between the parties through the Chairman of the Ghatal Municipality. Hence, since the parties agreed to refer their disputes to arbitration, it would be an extremely technical approach to refuse a reference only on the hypertechnical ground of the Chairman, instead of the Municipality itself, being impleaded. In any event, such objection can be taken before the Arbitrator, if appointed.

Insofar as the second objection is concerned, the same has no legs to stand upon, since it is the perception of dispute from the view point of the claimant which is germane in deciding whether the dispute is referable to arbitration. The claimant squarely disputes the termination of its agreement and seeks payment on the basis of work done by it.

Hence it cannot, from any perspective, be said that there is no existing dispute between the parties.

The third objection taken by the respondent also fails to find favour with the Court. As per Cause 25, in case of a dispute, the same is to be referred to the sole arbitration of the Chief Engineer of the Directorate of Municipal Engineering. Should the Chief Engineer be unwilling, he would have the liberty to appoint an Arbitrator in terms of Clause 25. However, both the said provisions are squarely violative of Section 12 of the 1996 Act, since the Chief Engineer is only a functionary of the respondent and will have evident conflict of interest with the petitioner.

Thus, since the dispute is otherwise arbitrable and comes within the ambit of the arbitration clause in the agreement between the parties, there cannot be any hindrance in referring the dispute in arbitration.

Accordingly, AP-COM 819 of 2024 is allowed, thereby appointing Mr. Debabrata Saha Roy, a member of the Bar Association, as the sole Arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator.

The learned Arbitrator shall fix his own remuneration, in consultation with the parties and within the framework of 1996 Act, read with its Fourth Schedule.

It is made clear, however, that all issues, including the maintainability of the arbitral proceeding are kept open for being decided by the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)

SP/