

OCD-13

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

AP-COM/858/2024

RAKESH KUMAR CHAUDHARY
VS
STEEL AUTHORITY OF INDIA LIMITED,
DURGAPUR STEEL PLANT

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 25th September, 2024

Appearance:
Mr. Ratul Das, Adv.
Mr. Soumik Chakraborty, Adv.
...for the petitioner

The Court:-Affidavit of service filed in Court today be kept on record.

Despite service, none appears for the respondent. The petitioner seeks appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

Upon hearing learned counsel for the petitioner, the Court finds two possible impediments to such reference.

The first impediment is that in the relevant clauses of the agreement between the parties, there is a provision for pre-arbitral conciliation to be undertaken by the parties. However, there is sufficient material on record to indicate that such process has been substantially undertaken. By an order dated September 11, 2015 passed in WP No. 9175(W) of 2015, a coordinate Bench of this Court disposed of the writ petition with a direction upon the Deputy General Manager of Steel Authority of India Limited (SAIL), the respondent, to consider

the grievance raised by the petitioner in the writ petition and to take appropriate step for ameliorating its grievance in accordance with law as early as possible. A copy of the said order is annexed to the application, as is a subsequent communication dated February 15, 2016 by the respondent to the petitioner indicating that subsequently, pursuant to the said order of the Court, an exercise was undertaken before the Deputy General Manager to resolve the issue amicably. Thus, the said proceeding can be construed substantially to be an effort at pre-arbitral conciliation as contemplated in Clause 13 of the agreement.

In any event, there have been several correspondences between the parties in between, which makes it futile to further revert back the parties to the stage of pre-arbitral formalities.

As per the pleadings in the application and submission of learned counsel for the petitioner, the said efforts have already failed, giving rise to the present dispute.

The second possible impediment could have been that the principal claims sought to be referred as well as the present application under Section 11 are barred by limitation. However, the petitioner has pleaded sufficiently in the application and *prima facie* substantiated by materials annexed to the same to the effect that the issue of limitation, in the least, is debatable and thus cannot be decided on merits by the Section 11 Court. The reasons for the above finding is that upon a dispute having arisen and lingered between the parties, there was an invocation of the arbitration clause in the year 2016 by the petitioner.

Ultimately in 2018, there was an acknowledgement of a part of the claim of the petitioner by the respondent in writing.

Subsequently, as late as on May 5, 2020, another intimation was given by the respondent, which also acknowledged a further part of the claim, increasing the quantum which was admitted previously in the communication of 2018.

Subsequently, even in January, 2024 there has been an acknowledgment of part claim of the petitioner, which brings the subsisting dispute within the fold of limitation. In fact, in January, 2024, a part of the payment claimed by the petitioner has actually been paid by the respondent, thereby keeping the dispute alive insofar as limitation is concerned. In the meantime, in 2021, three ex-employees of the respondent were nominated as arbitrators by the respondent, which is a gross contravention of the Fifth Schedule of the 1996 Act, read with Section 12 thereof. Such developments delayed the reference to arbitration and filing of the present application.

As such, it cannot be said that either the actual claim of the petitioner, which is sought to be referred to arbitration, or the Section 11 application is barred by limitation.

Even otherwise, the claim of the petitioner, which primarily revolves around a money claim, is arbitrable and comes within the ambit of the arbitration clause of the agreement between the parties. As such, the matter ought to be referred to arbitration.

Accordingly, AP-COM/858/2024 is allowed, thereby appointing Justice Pradipta Roy, a retired Judge of this Court, as the sole arbitrator to resolve the dispute between the parties, subject to a declaration being obtained from the said learned Arbitrator under Section 12 of the Arbitration and Conciliation Act,

1996. The learned Arbitrator shall fix his own remuneration within the framework of the 1996 Act and its Fourth Schedule.

(SABYASACHI BHATTACHARYYA, J.)

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