

AP/459/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(Commercial Division)

WELKIN TELECOM INFRA PRIVATE
PVT.LTD.

-VERSUS-

WEST BENGAL STATE ELECTRICITY
DISTRIBUITION CO. LTD. AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 14th November, 2024

Appearance:

Mr. Amitava Ghosh, Adv.

Mr. Malay Kumar Das, Adv.

Mr. Sourav Chatterjee, Adv.

Ms. Soumashree Dutta, Adv.

...for the Petitioner.

Mr. Supriyo Chattopadhyay, Adv.

Mr. Sudip Kumar Maiti, Adv.

...for the respondent.

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996.

The petitioner was employed as a contractor under the respondent. The contract period, upon extension, ended on July 31, 2019. The petitioner claims to have completed the work.

The petitioner's contention is that the non-payment of the final bill, bills raised on account of escalation, the interest component and the claim on account of reimbursement of GST paid by the petitioner, were, inter alia, the subject-matter of the dispute. Mr. Ghosh, learned Advocate for the petitioner refers to the arbitration clause, being Clause No. 3.3. Mr. Ghosh submits that the arbitration clause is preceded by an inhouse dispute resolution mechanism. As the claims raised by the petitioner were not paid, by a letter dated September 21, 2021, the petitioner approached the respondents in accordance with Clauses 3.1 and 3.2, for amicable settlement. The document is at pages 38 to 40 of the application. As the petitioner did not hear from the said respondents, notice invoking arbitration was issued on April 19, 2022. Even thereafter, the respondents did not reply.

Mr. Supriyo Chattopadhyay, learned advocate for the respondents has filed an affidavit-in-opposition raising objections on the ground that the arbitration clause could not be invoked and that the notice invoking arbitration was premature. It has been stated that meetings were held on January 6, 2022 and April 27, 2022 and the matter would be decided soon.

Mr. Ghosh, submits that specific denial to such averments in the affidavit-in-opposition filed by the respondent, is available in paragraph 3(c) at page 6 of the affidavit-in-reply. It has been specifically pleaded that the meetings were relating to another project. On January 6, 2022 and

April 27, 2022, the disputes which are the subject matter of the present proceedings, were not discussed.

Heard the parties.

The resolution of dispute by way of arbitration has been provided for and notice invoking arbitration is also on record. A single pleading in the affidavit-in-opposition that on January 6, 2022, the issues were discussed with the authorized representative of the respondents (not supported by any document), cannot be the sole ground for this Court to hold that the invocation of arbitration was premature. Nothing has been put forward in the affidavit-in-opposition which would indicate that the respondents had attempted to resolve the dispute amicably in terms of Clauses 3.1 and 3.2 of the said agreement. Under such circumstances, the question of the invocation of arbitration, being premature, does not arise. In my, prima facie opinion, it is an admitted position that an arbitration clause is in existence and the dispute is alive. However, the respondents may raise their objections before the learned Arbitrator, in accordance with law. It is not expected that the contractor would wait for an unending period, till the respondents decide to address the issue in accordance with the inhouse mechanism, thereby frustrating the entire dispute redressal mechanism by way of arbitration.

Under such circumstances, this Court refers the dispute to Mr. Utpal Bose, learned Senior Advocate, Bar Library Club to arbitrate the disputes between the parties. This appointment is subject to compliance

of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his remuneration as per the Schedule of the said Act.

Accordingly, AP/459/2022 is disposed of.

All parties are to act on the basis of server copy of this order.

(SHAMPA SARKAR, J.)

A/s.