

OCD -11

ORDER SHEET

AP-COM/883/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE

MSTC LIMITED

VS

SESA INTERNATIONAL LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th November, 2024.

Appearance:

Mr. Ratnanko Banerjee, Sr.Adv.
Mr. Kamal Kr. Chattopadhyay, Adv.
Ms. Srijani Ghosh, Adv.
Ms. Sristi Barman Roy, Adv.
.... for the petitioner

Ms. Noelle Banerjee, Adv.
Mr. Sajjan Kr. Kasera, Adv.
Ms. Sucheta Mitra, Adv.
...for the respondent

The Court: Liberty is granted to the advocate-on-record for the claimant to correct the description of the application in the cause title.

By communication dated September 3, 2024, learned sole arbitrator appointed by the court informed the parties that he had resigned from the matter. He thus refused to act as the sole arbitrator. The petitioner prays for appointment of a substitute arbitrator.

Ms. Banerjee, learned advocate for the respondent submits that the respondent had filed a suit. An application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act,) is also pending before the learned Civil Court at the instance of the petitioner. As such, this Court must refrain from appointing an arbitrator as the issues involved in the suit are yet to be decided and the application under Section 8 of the said Act has been filed with similar prayers.

It is further submitted that the bank is a necessary party, but the bank has not been impleaded in the proceeding.

It appears that clauses 18.0 and 18.1 of the agreement between the parties, which are at page 26 of the brief, deal with settlement of dispute by way of an arbitration. Since 2009 four arbitrators had already embarked upon adjudication of the dispute between the parties. The issue raised with regard to the arbitrability of the claim and misjoinder of parties etc. cannot be decided by this Court, at this stage. It is a matter of record that at the request of the petitioner, an arbitrator was appointed in 2009 and the arbitration proceedings continued thereafter. Thus, the contentions of the respondent are not accepted. This is a simple prayer for appointment of a substitute arbitrator under Section 15 of the said Act. Questions raised by Ms. Banerjee can be urged before the learned Arbitrator, if permissible in law.

Under such circumstances, the application is disposed of by appointing Mr. Jishnu Saha, learned senior advocate as the sole arbitrator, to arbitrate the dispute. The arbitration shall continue from the stage it was last heard by the erstwhile learned arbitrator. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his remuneration as per the schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

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