

OCD-12

ORDER SHEET

AP-COM/893/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

MEHER FOUNDATIONS AND CIVIL ENGINEERS PRIVATE LTD
VS.
SPML INFRA LIMITED (SUBHAS PROJECTS AND MARKETING LTD.)

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th November, 2024.

Appearance:
Mr. Amitava Ghosh, Adv.
Mr. Sourav Chatterjee, Adv.
...for the Petitioner

Mr. Aritra Deb, Adv.
...for the Respondent.

The Court :The affidavit of service is taken on record.

This is an application under Section 11 of the Arbitration and Conciliation Act, 1966 (hereinafter referred to as the 'said Act'). The petitioner was engaged by the respondent to execute some piling work. The petitioner contends that the work could not be completed as NTPC had stopped the petitioner from carrying out the same on account of certain disputes between NTPC and the respondent. It is submitted that non-payments of the amounts due and other disputes between the petitioner and the respondent could not be resolved as a proceeding was before an arbitrator for resolution of a dispute between NTPC and the respondent. The

petitioner claims to have also approached NTPC and were allegedly informed that the claim of the petitioner would be liquidated by the respondent as the money awarded by the arbitrator in the arbitration proceedings between the respondent and NTPC, had been paid to the respondents. The petitioner had invoked the arbitration clause and the respondent replied to the notice, thereby denying the claim of the petitioner. The respondent suggested the name of a learned Retired Judge to act as the sole arbitrator, in response to the notice invoking arbitration. In reply to such letter, the petitioner suggested the names of three learned Retired Judges.

The learned Advocate for the respondent submits that the claim is barred by limitation.

Several documents have been annexed. The question as to whether during pendency of the arbitration between NTPC and the respondent, the petitioner's claim could have been adjudicated or not and whether the claim is barred, are mixed questions of law and fact. There are several communications. Further, the respondent did not raise any objection on point of limitation while replying to the notice under Section 21 but suggested the name of a learned Judge to act as a learned Arbitrator. Under such circumstances, the issue of limitation will have to be decided on the facts and as per the records, by the learned Arbitrator. The respondent has not been able to show that the claim is ex facie barred by the laws of limitation. This point is left open to be urged and decided by the learned Arbitrator.

The Court appoints Hon'ble Justice Debasish Kar Gupta, former Chief Justice of the Calcutta High Court, to arbitrate the dispute between the

parties. All questions raised by the respondent, including the question of time barred claim, shall be urged before the learned Arbitrator. This Court has not gone into the merits of the issues involved. The appointment is subject to compliance of the provisions of Section 12 of the said Act and the learned Arbitrator shall be entitled to fix his own remuneration as per the provisions of the Act.

(SHAMPA SARKAR, J.)

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