

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

AP-COM/948/2024
EASTERN NAVIGATION PRIVATE LIMITED
VS
M/S ADITYA MARINES

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 17th December , 2024

Appearance:
Mr. Anuj Singh, Adv.
Mr. Aman Agarwal, Adv.
Mrs. Rashmi Singhee, Adv.
...for petitioner.

Mr. Subhabrata Datta, Adv.
Mr. Debashis Sarkar, Adv.
...for respondent.

The Court:- This application has been filed for appointment of an Arbitrator on the basis of clause 11 of the service order for hiring of self-propelled split hopper barge for the respondents Ramayapatnam Port Project. The clause provides that any dispute arising out of the service order shall be amicably / mutually discussed and resolved. In case such attempt is unsuccessful, arbitration would follow at Kolkata under the applicable Indian Arbitration Laws.

The petitioner contends that disputes arose between the parties and the service order/agreement was terminated. It is further submitted that by several e-mails and discussions, the petitioner claimed the dues. One such e-mail has been annexed as annexure 'F' dated January 12, 2024. According to the petitioner, the attempts of amicable resolution failed as the e-mails were not replied to. Thereafter, a notice invoking arbitration dated April 23, 2024 was issued. The respondent did not reply to the said notice invoking arbitration. The petitioner claims Rs. 1,55,00,952.26/- as due and payable by the respondent.

Mr. Dutta learned Advocate for the respondent submits that prior to the service order dated February 21, 2023 another service order dated February 13, 2023 was issued to the petitioner which did not contain any arbitration clause. Moreover, payment on the basis of the said service order dated February 13, 2023 have been made. Reference is further made to an e-mail dated December 22, 2023 by which the petitioner was informed that the respondent did not recognize the service order dated February 21, 2023.

Having heard the rival contentions, this Court finds that the service order dated February 21, 2023 contains an arbitration clause. The notice invoking arbitration is available with the records. This Court is not required to delve into the issue any further and transform itself to a fact finding Court. It is available from the records that the service order dated February 21, 2023 was signed by the parties and only in December 2023 the respondent for the first time raised an objection with regard to the said service order. Whether the earlier service order was acted upon and the service order dated February 21, 2023 was ignored, is a matter of evidence. Thus, the issue raised by Mr. Dutta with regard to the arbitrability of the dispute in question can be raised before the learned Arbitrator and the learned Arbitrator shall decide all issues in accordance with law on the basis of the records and the evidence to be let by the parties.

This Court deems it fit to appoint Hon'ble Justice Sahidullah Munshi, former Judge of Calcutta High Court as the learned Arbitrator, to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the mandate of law.

Affidavit of service is taken on record.

Accordingly, AP-COM/948/2024 stands disposed of.

(SHAMPA SARKAR, J.)

SK.