

OCD-10

ORDER SHEET

AP/751/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

M/S. POWER MOULD DAMAN AND ORS.
Versus
THE UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th January, 2024.

Appearance:

Mr. Tulshi Das Ray, Adv.

Ms. Susmita Pal, Adv.

Mr. Tapan Ray, Adv.

Mr. Siddhartha Lahiri, Adv.

Ms. Amrita Pandey, Adv.

The Court: The dispute between the parties arises out of an Agreement dated 1st March, 2022 for supply of certain equipments by the petitioner to the respondent in agreed quantities. This agreement contains an arbitration clause which further provides that the disputes and differences will be dealt with as per the arbitration clause of the IRS Conditions of Contract as amended from time to time.

The dispute, in essence, is of the petitioner claiming an amount of approximately Rs.8.61 lakhs on account of the materials supplied. The petitioner, through learned counsel, states that the respondent failed to pay for the equipment supplied by the petitioner to the respondent. It is also submitted

that the respondent requested for a lower rate of payment which the petitioner did not accede to.

Learned counsel appearing for the respondent/Eastern Railway submits that the petitioner agreed to appointment of an Arbitrator from the Railways Department other than the Stores Department. Counsel places a letter written by the petitioner on 5th December, 2022 in this regard.

The admitted fact is that the petitioner invoked the arbitration clause in the agreement on 19th August, 2022. The only question which remains is whether the respondent's subsequent choice of Arbitrator, who is presently serving as the Chief Materials Manager, would be a valid appointment under the provisions of the 1996 Act.

This Court is not inclined to accept the respondent's choice of Arbitrator. The person concerned is a serving Officer of the respondent and the petitioner's letter of 5th December, 2022 makes it evident that the petitioner agreed to settle for an Arbitrator, who was not a part of the Stores Department, under some sort of duress. In any event, the law as settled by the Supreme Court and the High Courts, precludes appointment of an Arbitrator who is a serving Officer of one of the parties, regardless of the nature of engagement.

Considering the fact that there is a dispute between the parties which is relatable to the arbitration clause, AP/751/2023 is accordingly allowed and disposed of by appointing Mr. D. Sharma, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed

format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 6th January, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

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