

OD-11

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

AP/845/2023

H P ISPAT PRIVATE LIMITED
VS
SUSANTA DEY AND ANR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 30th April, 2024.

Appearance:
Mr. Aniruddha Mitra, Adv.
Mr. Debraj Sahoo, Adv.
Mr. Bhaskar Dwivedi, Adv.
Mr. S. Kundu, Adv.
...for petitioner.

The Court: Affidavit of Service filed on behalf of the petitioner be kept with the records.

None appears on behalf of the respondents nor is any adjournment prayed for on their behalf.

Significantly, the matter had appeared on two prior occasions i.e. 11 December, 2023 and 8 April, 2024 when the respondents were unrepresented.

This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996. The disputes between the parties arise out of a claim for price of good sold and delivered.

It is submitted on behalf of the petitioner that pursuant to the agreement dated 4 April, 2021, the respondent has failed and neglected to honour their obligations and there is a sum in excess of Rs. 24,06,190.82/- (inclusive of interest) which had become due and payable. However, between April 21 to

March 23 the respondent has paid a sum of Rs.10,17,352/-. There remains an amount of Rs.13,88,838/- due and payable.

In such circumstances, the petitioner had invoked the arbitration clause in terms of the agreement dated 4 April 2021 and issued a noticed under section 21 of the Act on 7 February 2023.

The arbitration clause is set out hereinbelow:

The agreement is executed on 04.04.2021 M/s, H P Ispat Ltd. 1 R. N. Mukherjee Road, Kolkata-700001 hereafter referred as "Principal" and Susanta Dey, Vill: Baramohanpur, PO: Khakurda, PS: Belda, Dist: Pashim Mednipur, West Bengal, 721445, running business in the of "m/s, Shibaskati Builders & Roadways" AND "M/s, Shibshakti Hardwares", hereafter referred as "Del Credere Dealer" which term shall unless excluded by or repugnant to the subject or context be deemed to mean and include its, directors, officers, heris, representatives, successors in interest, executors, administrators, legal representatives assigns as the case may be. Del Credere Dealer as on date has received the TMT Bars in favour of M/s, Shibshakti Builders & Roadways due as on date a sum of Rs.7,34,385.82 and M/s, Shibshakti Hardwares due as on date a sum of Rs.16,71,805.00. Totaling of Rs.24,06,190.82 is due and payable. Del Credere Dealer will be required to make payment of the entire dues on each invoice within 30 days from the invoice due in default would be liable to pay interest of 24% p.a. Time shall be essence of the contract. It is mutually agreed and accepted by all the parties herein, that all disputes and differences, if any, arising out of, or, in relation to anything and/or sale and purchase and/or touching and/or concerning the same and/or for determination of any liability of whatsoever hereunder shall be referred to Ruma Mukherjee, Advocate, of 4/1, Red Cross Place, Kolkata-700001 being the sole Arbitrator for adjudication under the Arbitration & Conciliation Act, 1996. The award made and published by the Ld. Arbitrator shall be final and binding on the parties herein. The seat/venue/place of arbitration will be within Kolkata. The Hon'ble High Court at Calcutta shall have alone exclusive jurisdiction only. Del Credere Distributor also agrees, undertakes, and accepts to indemnify and hold harmless Principal, if any, against all loss, or losses, liabilities, claims, damages and expenses whatsoever (including, but not limited to, any and all expenses whatsoever reasonably incurred in investigating,

preparing or defending against any litigation commenced and/or threatened or any claim whatsoever) arising out of instant agreement and/or by any dealer stated herein above and/or other whatsoever touching and/or any transection arising out of instant agreement with whosoever.

Upon the respondents defaulting in making the due payments nor appointing the Arbitrator to resolve the disputes, notices dated 3 October 2023 were issued by the Advocates of the petitioner.

Despite receipt of notices the respondent has continued to remain silent and also chosen not to appear.

The disputes between the parties are live arbitral disputes covered under the arbitration clause arising out of an agreement dated 4 April, 2021.

In such circumstances, Mr. Raj Ratna Sen, Advocate and a member of the Bar Library is appointed as an Arbitrator, subject to the Arbitrator communicating his consent to the Registrar, Original Side of this Court within three weeks from date.

The Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP/845/2023 stands disposed of.

(RAVI KRISHAN KAPUR, J.)