

OCD-9

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

AP-COM/6/2023

GANERIWALA 3PL PVT LTD
VS
THE CENTRAL WAREHOUSING CORPORATION

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 24th April, 2024.

Appearance:
Mr. Rajeev Kr. Jain, Adv.
Mr. Samrat Chowdhury, Adv.
Mr. R. Prajna, Adv.
...for petitioner

Ms. S. Chatterjee, Adv.
...for respondent

The Court: This is an application under section 11 of the Arbitration and Conciliation Act, 1996.

The respondent is an entity constituted under the Warehousing Corporation Act, 1962 and is a Government of India undertaking.

In or about July 2021, the respondent had issued an Expression of Interest, inter-alia intending to hire godowns/warehouses in the State of West Bengal. Pursuant to negotiations between the petitioner and the respondent, an agreement dated 7 January 2022 was entered into by and between the parties whereby the petitioner agreed to construct and let out a space measuring approximately 1,50,000 sq. ft. at Kazi Nazrul Islam Airport, situated at Durgapur, West Bengal for warehousing purposes to the respondent.

Clause 24.B of the agreement reads as follows:

24.B ARBITRATION:

All disputes and differences which are not resolved by Amicable Resolution, as mentioned above, arising out of or in any way touching or concerning this agreement whatsoever shall be referred to the sole arbitration of any person appointed by the Managing Director, Central Warehousing Corporation, New Delhi. The award of such arbitrator shall be final and binding on the parties to this contract. It is a term of this contract that in the event of such Arbitrator to whom the matter is originally referred transfer is unable to act for any reason, the Central Warehousing Corporation at the time of such inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of this contract. Such person shall be entitled to proceed with the reference from the stage at which was left by his predecessor. It is also a term of this contract that no person other than a person appointed by the Managing Director, Central Warehousing Corporation, New Delhi as aforesaid should act as Arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all. The Arbitrator shall give reasons for his award.

Provided further that any demand for arbitration in respect of any claim [s] of the parties, under the contract shall be in writing and made within one year of the date of termination or completion [expiry of the period] of the contract and where this provision is not complied with the claim [s] of the contractors shall be deemed to have been waived and absolutely barred and the Corporation shall be discharged and released of liabilities under the contract.

The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The arbitral proceedings in respect of dispute shall commence on the date on which the Arbitrator call upon the parties to file their claim and defence statement, counterclaim if any.

The work under the contract shall, if reasonable possible continue during the arbitration proceedings and no payment due or payable to the contractors shall be withheld on account of such proceedings.

The cost of arbitration shall be borne by parties as per the decisions of the arbitrator.

The arbitrator shall give separate award in respect of each dispute of difference referred to him.

Subject as aforesaid the Arbitration & Conciliation Act 1996 as amended from time to time shall apply to the Arbitration proceedings under this clause.

It is alleged that in constructing the warehouses, the petitioner has incurred financial burden and now the respondent is refusing to honour and discharge their obligations. It is also submitted that there are live disputes

which arise out of the agreement dated 7 January, 2022 and are covered under the arbitration clause. The petitioner had also issued a notice dated 27 September, 2023 under section 21 of the Act. There has been no response to the said notice by the respondent.

On behalf of the respondent, it is submitted that, it is the petitioner who had failed to hand over the constructed site as stipulated under the agreement dated 7 January 2022. The respondent also relies on diverse correspondence exchanged between the parties. In such circumstances, the respondent by a notice dated 12 July, 2023 had also terminated the agreement. Nevertheless, the respondent has no objection if such disputes are referred to a Sole Arbitrator.

In such circumstances, there are live arbitral disputes by and between the parties which pertain to the agreement dated 7 January, 2022 and are covered by the arbitration clause. Accordingly, AP 6 of 2023 stands disposed of, by appointing the Hon'ble Former Chief Justice Mr. Sanjib Banerjee of the Madras and Meghalaya High Courts as Sole Arbitrator subject to the Learned Arbitrator communicating his consent to the Registrar, Original Side of this Court.

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

(RAVI KRISHAN KAPUR, J.)