

OCD-6

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

AP-COM/30/2023

SUBHAM ENTERPRISE
VS
INDIAN INSTITUTE OF TECHNOLOGIES KHARAGPUR AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th January, 2024.

Appearance:

Mr. Subhabrata Datta, Adv.

Mr. Debashis Sarkar, Adv.

Mr. Aranya Saha, Adv.

...for the petitioner

Mr. Billwadal Bhattacharya, Adv.

Mr. Avinash Kankani, Adv.

...for the respondents

The Court: The respondent no. 1 should read as "Indian Institute of Technology, Kharagpur".

The arbitration clause is contained in a contract dated 13th January, 2021 which was awarded by the respondents to the petitioner for resurfacing and repair of bituminous road inside the campus of the IIT, Kharagpur.

The petitioner, through learned counsel, claims that the petitioner completed the work on 30th November, 2022 and the respondents handed over a completion certificate on 25th April, 2023. The respondents also gave three extensions before the petitioner completed the work. The petitioner, however,

issued a letter of demand on 10th May, 2023 for outstanding dues of approximately Rs.5.94 crores and thereafter invoked the arbitration clause in the Agreement on 19th June, 2023. The respondent did not reply to this Notice.

Learned counsel appearing for the respondents submits that the letter of demand of 10th May, 2023 was after the respondents had made substantial payments to the petitioner in terms of the final bill raised by the latter. According to counsel, the respondents paid approximately Rs.7.12 crores. Counsel submits that the demand made by the petitioner is hence after conclusion of the contract between the parties. Counsel, however, does not dispute the existence of an arbitration Agreement.

Upon hearing counsel appearing for the parties, the Court is of the view that there is indeed an arbitration Agreement which exists between the parties and also disputes in terms of the alleged outstanding claims of the petitioner for the work done. The respondents, of course, dispute the quantum as well as the claims.

The parties, however, agree that they would be better-served by appointment of a single Arbitrator instead of 3 Arbitrators as provided by the arbitration Agreement.

AP-COM/30/2023 is allowed and disposed of by appointing Mr. Soumitra Pal, former Judge of this Court 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.)