

05.02.2025
Item No.17
RP/SM
Ct. No.01

FMA 6 of 2025
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IA No.CAN 1 of 2025
MBG Commodities Private Limited
Vs.
MSTC Ltd. & Anr.

Mr. Mainak Bose, Sr. Adv.
Mr. Neeraj Kumar Pandey
Mr. Prabhleen Bharara
Mr. S.M. Akhter

....For Appellant

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Barnik Ghosh

....For MSTC Ltd.

1. This intra-Court appeal is directed against the order dated 13th November, 2024 passed in WPA 26012 of 2024. The said writ petition was filed by the appellant praying for issuance of writ of mandamus to direct the respondent no.1 to release forthwith the security deposit to the tune of Rs.26.98 crore furnished by the appellant/writ petitioner to the respondent no.1 under the purchase orders upon the petitioner furnishing undertaking in terms of the said purchase orders; for issuance of writ of mandamus to direct the respondent no.1 to pay interest amounting to Rs.50.31 crores for illegally withholding the security deposit to the tune of Rs.26.98 crores beyond the period of contract on commercial terms and to issue a writ of prohibition forbearing the

respondent no.1 from extending the bank guarantee in favour of the respondent no.2 in respect of the said Purchase Order No.108 dated February 29, 2016 by taking any steps or further steps in respect thereto in any manner whatsoever. The learned Single Bench in the impugned order opined that there is a dispute between the parties which cannot be resolved in writ petition, more particularly, when there is an arbitration clause in the agreement between the appellant/writ petitioner and the respondent no.1. Further, the learned Single Bench observed that the act of not releasing the security deposit is a difference which has cropped up in between the parties to the agreement and the agreement contains a provision for settlement of such difference by way of arbitration. Accordingly, the writ petition stood disposed of leaving it open to the appellant/writ petitioner to avail relief of arbitration as mentioned in the said agreement. Aggrieved by such order, the writ petitioner has preferred the present appeal.

2. We have elaborately heard Mr. Bose, learned senior advocate for the appellant and Mr. Mitra, learned senior advocate for the respondent no.1. During the course of hearing we have taken note of various clauses of the agreement dated 11th January, 2015, more particularly, Clause Nos.5, 10(b), 11(g) and 12

and opine that the claim of the appellant/writ petitioner is essentially a money claim and, therefore, the appellant would be well advised to invoke the arbitration clause available in the agreement. Though certain submissions were made by the learned senior advocate for the appellant on merits and during the course of hearing instruction has been given by the appellant that the appellant is ready and willing to invoke the arbitration clause contained in Clause 20 of the agreement between the parties. In terms of sub-clause (a) of Clause 20 in the event of any dispute or difference between the parties hereto relating to the interpretation, construction, fulfillment or otherwise of this agreement or any provision hereof, such dispute or difference shall be settled by the process of arbitration of a Sole Arbitrator to be appointed by the Chairman-cum-Managing Director of the respondent no.1 and the venue of such arbitration proceeding shall be at Kolkata and the costs of the arbitration shall be borne equally by the parties hereto. Though Clause 20(a) states that the Sole Arbitrator shall be appointed by the Chairman-cum-Managing Director of the respondent no.1 but taking into consideration that appellant is now ready and willing to agitate the matter in terms of the remedy provided under Clause 20 of the agreement, we deem it fit to exercise

discretion to appoint a Sole Arbitrator in the present proceeding.

3. Learned senior advocate appearing for the respondent in support of his submission that the writ petition is not maintainable places reliance on the judgment in the case of Eastern Coalfields Limited & Anr. vs. UCC-RLA-STA (JV) & Ors. reported in 2024 SCC Online CAL 8843.
4. In the light of the fact that the appellant has irrevocably agreed before this Court to agitate the matter by way of arbitration we while affirming the view taken by the learned Single Bench dispose of the appeal by appointing Hon'ble Justice Siddhartha Roy Chowdhury (Retd.) of the High Court at Calcutta as the Sole Arbitrator. The appellant is at liberty to take further steps in the matter.
5. In the result, the appeal and the connected application are disposed of.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)