

20.06.2025

Court No.1

Item No.5

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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION**

CO 87 of 2024

**M/s. Suparna Electricals
versus
Northeast Frontier Railway & Anr.**

Mr. Ajay Singhal
Ms. Chiroshhre Dey
.....for the petitioner.

Mr. Sudipto Kumar Mazumder, DSGI
Mr. Sourab Kar
. . for the respondent Railway.

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the said Act’).

The disputes arise out of a contract between the petitioner and the Northeast Frontier Railway Division of the Indian Railways entered pursuant to the petitioner being successful bidder in tender no.30-2018 floated by the Railways. The Standard General Conditions of Contract (hereinafter referred to as ‘the General Conditions of Contract’) published in July, 2014 was made part of the tender bearing no. 30-2018 which culminated into the contract between the parties on the petitioner’s offer being accepted. Clause 63 of the said General Conditions of Contract provides for settlement

of disputes and differences of any kind whatsoever arising out of or in connection with the contract whether during the progress of the work or after its completion or whether before or after determination of the contract. The contractor in respect of a dispute as aforesaid has to approach the General Manager of the concerned Railway who shall within 120 days from the date of receipt of such representation give his decision. If the contractor is dissatisfied in respect of such decision save and except the matters which are not arbitrable under the said General Conditions of Contract or in the case the General Manager does not dispose of the same, can seek for appointment of an Arbitrator in terms of Clause 64 of the said General Conditions of Contract. Clause 64(3) provides for appointment of Arbitrator. The appointing authority in case of disputes in excess of Rs.25,00,000/- is the General Manager and the Arbitrator shall be a Gazetted Officer of the Railways not below JA Grade.

In the instant case, the petitioner has fulfilled the conditions of Clause 63 of the said General Conditions of Contract. The petitioner now seeks appointment of an Arbitrator.

It is well settled in view of the judgment reported in **2024 (4) SCC 341 (Lombardi Engineering Limited vs. Uttarakhand Jal Vidyut Nigam Limited)** that the General Manager in the instant case is precluded from

appointing an Arbitrator in view of the provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996. An officer of the Railways also cannot be appointed as the Arbitrator as provided under the arbitration clause.

In the aforesaid facts and circumstances, after considering that there exists an arbitration agreement between the parties, the claim of the petitioner is not stale or long barred claim and there is a proper and valid notice invoking the arbitration agreement, I am inclined to appoint an Arbitrator. This is more so because the appointing power or the power to nominate available to the General Manager under the said General Conditions of Contract is no more available and an officer of the Railways also cannot be appointed as an arbitrator.

In the aforesaid facts and circumstances, Ms. Samapti Chatterjee, a former Judge of this Court is appointed as an Arbitrator to enter into reference and adjudicate the disputes and differences between the parties. The learned Arbitrator shall be entitled to the fees in terms of the 4th Schedule of the said Act read in the light of the judgment reported in (2024) 4 SCC 481 [*Oil and Natural Gas Corporation Limited Vs. Afcons Gunanusa JV*]. The learned Arbitrator shall be entitled to clerical and other assistance for which the parties shall equally bear the expenses apart from meeting the

remuneration of the learned Arbitrator and other incidental expenses to be shared equally.

CO 87 of 2024 is, accordingly, disposed of.

(Arindam Mukherjee, J.)

Later

The learned Deputy Solicitor General appearing for the respondents prays for stay of operation of this order.

The same is considered and rejected.

(Arindam Mukherjee, J.)