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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP-COM/647/2024
ANIL COTTON SUPPLIERS
VS
TAMRALIPTA CO-OPERATIVE SPINNING MILLS LTD.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : March 6, 2025

Mr. Rajeev Kumar Jain, Adv.
Mr. Kunal Shaw, Adv.
Ms. Yamini Mahawar, Adv. ,...for petitioner.
Mr. Chayan Gupta, Adv.
Mr. Sayantan Chatterjee, Adv.
Mr. Soumyajyoti Nandy, Adv.
Mr. Deepankar Thakur, Adv.
Mr. Uday Sharma, Adv. ...for respondent.

The Court :- This is an application for appointment of a learned Arbitrator on the basis of the arbitration agreement contained in purchase orders issued by the respondent. One such arbitration clause is quoted below.

“Arbitration: Except where otherwise provide in the contract all questions and disputes relating to the meaning of the specifications & timely delivery here in before mentioned and as to any other question, claim, right, matter or things, whatsoever, in any way arising out of relating to the contract specification & timely delivery, order or these conditions or otherwise concerning the specification of material or the timely delivery or failure to execute the same, whether arising during the process of the work shall be referred to the sole Arbitrator, Chairman of the T.C.S.M. Ltd. should be chairman be for any reason unwilling or unable to act as Arbitrator, such question and disputes shall be referred to an Arbitrator to be appointed by the Chairman of the T.C.S.M. Ltd., and the award of the Arbitrator shall be final, conclusive and binding on all the parties to this contract.”

All the other purchase orders contain a similar clause.

It is submitted by the petitioner that, the running account was being maintained by the parties and payments against those purchase orders were

not made severally, but on an on-account basis, in a lump sum. Disputes and differences arose with regard to the non-issuance of credit notes and non-payment of outstanding dues.

It is submitted that the last delivery was made sometime in June, 2019, but payments were not made in order to liquidate all the dues of the petitioner. Petitioner also shows documents in support of the contention that even in March, 2021 certain payments had been made. Several materials have been annexed to the application, inter alia, to demonstrate that the innumerable requests had been made and a legal notice was also issued on January 23, 2024. The petitioner, ultimately, invoked arbitration by a letter dated February 17, 2024. The notice invoking arbitration was received by the respondent. As the respondent did not take any step, this application was filed.

Mr. Chayan Gupta, learned advocate for the respondent raises the issue of limitation and submits that the petitioner ought to have made the claim within three years from the date of delivery of the goods or at best within three years from expiry of the seventh day from the delivery. In support of such contention, Mr. Gupta relies on Articles 14 and 15 of the Limitation Act, 1963, Part II. Mr. Gupta supports his argument on the proposition that, the purchase orders were offers and acceptance thereof, led to a concluded contract. Thus, the period of limitation prescribed for suits relating to contract would govern the claim of the petitioner. The petitioner has tried to induce life into a dead claim.

This court has considered the relevant documents. It is not in dispute that there are arbitration clauses in the purchase order which disclose the meeting of the minds of the parties, to refer all disputes to arbitration arising out of the said purchase orders. The courts at Midnapore will have jurisdiction. On account payments were being made. Summary of the account statements have been annexed which indicate that even in March,

2021 on-account payment was made to the petitioner. This payment was made within the period of limitation.

With regard to the period of limitation, this court is of the view that on the facts of the case, the question of limitation is arbitrable. It can be raised before the learned Arbitrator. Prima facie, it appears to be a mixed question of fact and law. Moreover, with regard to the claim being time barred, this court is also of the, prima facie, view that the decision of the Hon'ble Apex Court which excludes the Covid pandemic period between March 15, 2020 and February 28, 2022, is applicable in this case.

Under such circumstances, for the referral court to go deeper into the questions raised by Mr. Gupta, will amount to transgressing into the territory of the learned Arbitrator.

Accordingly, this application is disposed of by appointing Mr. Amitesh Banerjee, learned senior Advocate, Bar Library Club, as the Arbitrator to arbitrate upon the dispute between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration as per the schedule of the Act.

All points on the merits of the claim is kept-open.

AP-COM/647/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)