

OC-137

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Jurisdiction
ORIGINAL SIDE
[Commercial Division]

AP-COM/570/2024

SAT INDER CONSTRUCTIONS PVT LTD
VS
THE CENTRAL PUBLIC WORKS DEPT (CPWD) IIT CAMPUS AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 7th January, 2025.

Appearance :
Mr. Ritoban Sarkar, Adv.
Mr. Pourush Bandyopadhyay, Adv.
Mrs. Surasree Dawn, Adv.
... for the petitioner.

Mr. Indrajeet Dasgupta, Adv.
Ms. Puspita Bhowmick, Adv.
... for the respondent.

The Court:- Supplementary affidavit filed in Court is taken on record.

This is an application for appointment of a learned Arbitrator for adjudication of the dispute between the parties. The petitioner relies on Clause 25(ii) of the General Conditions of Contract. The dispute arose out of NIT No.10/01(R-1)NIT/CE/(EZ-III)/2017-2018. According to the petitioner, some works were asked to be completed which were beyond the scope of the contract and on account of such additional works the petitioner raised certain bills. Those bills remained unpaid. The petitioner invoked the dispute resolution clause and wrote to the

superintending engineer for liquidating the claim of the petitioner by settling the same in accordance with the provisions of Clause 25(i).

The such dispute was not resolved. The petitioner also wrote to the Chief Engineer (EZ-III) on October 28, 2021 for resolution of the dispute by a settlement in terms of the Clause 25(i). The said application was not responded to. The Superintending Engineer-cum-Project Director, CPWD, Kharagpur by a letter dated November 3, 2021 rejected the claim of the petitioner, by a parawise reply to each of the claims.

It is contended by the petitioner that upon receipt of the said letter of rejection the notice invoking arbitration was issued on September 18, 2023.

Mr. Dasgupta, learned Advocate for the respondents submits that the notice invoking the arbitration was barred by the law of limitation as the same was issued after 3 years from the cause of action. As per the pleadings of the petitioner, the cause of action arose on July 1, 2018, but the notice invoking arbitration was issued on September 18, 2023.

Mr. Sarkar, learned Advocate for the petitioner submits that the non-payment of the dues is a continuing cause of action. Moreover, as per the dispute resolution clause, the petitioner approached the authority for settlement of the disputes by invoking clause 25(i) of the General Conditions of Contract. The General Conditions of the Contract form a part of the execution of the work awarded on the basis of the NIT.

Secondly, the rejection came on November 3, 2021. The Chief Engineer was also approached on October 28, 2021, but to no avail. Thus, the petitioner could not straight away invoke arbitration without following the procedure laid down. The cause of action to invoke the arbitration clause arose when the claims of the petitioner were rejected by the Superintending Engineer. The Chief Engineer is still silent with regard to the representation sent to him. Under such circumstances, the issue of limitation would not arise and the invocation of arbitration cannot be said to be time barred.

Considering the rival submissions of the parties, this Court, prima facie, finds that there is an existence of the dispute redressal clause and the reference to arbitration is preceded by an attempt of the parties to settle the disputes in terms of Clause 25(i). The notice invoking arbitration was issued within two years from denial of the claim of the petitioner, that is, after the mechanism for dispute redressal prior to reference to arbitration failed. Moreover, the matters whether the claim is a continuing cause of action or not, or whether a part of the claim is within the period of limitation, are matters which have to be decided on evidence.

Thus, the Court keeps the point of admissibility of the claims of the petitioner, the point of limitation raised by the respondents and all

other objections raised by the respondent, open and to be decided by the learned Arbitrator. As of now, the claim cannot be termed as “deadwood”.

Under such circumstances, the Court appoints Mr. Dhirendranath Sharma, learned Senior Advocate, Bar Library Club (Mob No.9830266167) as the learned Arbitrator, to arbitrate the dispute. 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.

AP-COM/570/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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