

OCD 12

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

AP-COM/1072/2024
MS/ JAI SHIV CONSTRUCTION PRIVATE LIMITED
VS
UNION OF INDIA AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : January 14, 2025

Mr. Suvasish Sengupta, Adv.
Ms. Amrita Panja Moulick, Adv. ...for petitioner.

Ms. Priti Jain, Adv.
Mr. Pulakesh Bajpayee, Adv. ...for respondents.

The Court :- This is an application for constitution of an arbitral Tribunal for adjudication of the disputes which have arisen between the parties.

The dispute arises out of a notice inviting tender and the Letter of Acceptance dated March 13, 2020. The petitioner was required to execute certain works for the South Eastern Railways at the Kharagpore division. The entire work was to be completed within 20 months from the date of the Letter of Acceptance. The petitioner alleges that as the site could not be handed over free from encumbrances, there was delay. The respondents extended the time for completion upto October 15, 2023 by a letter dated October 9, 2023. According to the petitioner substantial portion of the work had been executed, but payments were not made. The petitioner was served with a termination letter on October 20, 2023, within a period of ten days from the last extension. The petitioner was asked to be present at the site for final measurement, etc. The petitioner approached the Chief Engineer/Con-

HQ/Garden Reach by a letter dated October 30, 2023, ventilating his grievances and requested for settlement of the matter. The petitioner undertook to complete the work to the satisfaction of the Railways and requested withdrawal of the termination notice. This attempt at an amicable settlement of the matter failed. The petitioner challenged the termination of the contract by filing WPA/25832/2023. It is alleged that despite there being an interim order of stay of the termination, the Railway authorities already appointed another contractor to complete the remaining work. Thereafter, the petitioner filed an application under section 9 of the Arbitration and Conciliation Act, 1996 for interim relief. In the said proceeding, learned Receiver was appointed and the learned Receiver made an inventory of the materials of the petitioner lying at the site and had filed report before the learned Civil Court. The petitioner issued a notice under section 21 of the Arbitration and Conciliation Act, 1996 and suggested the name of a learned Arbitrator to adjudicate upon the disputes between the parties. The respondent disagreed. The Railway authorities replied to the said notice and asked for waiver of section 12[5] of the said Act and also asked the petitioner to choose the Arbitrator from the panel supplied by them, comprising of retired officials of the Railways.

The above mechanism is found to be unworkable and contrary to Section 12(5) of the said Act and the law laid down by the Hon'ble Apex Court. The petitioner cannot be compelled to choose an arbitrator from the panel supplied by the respondent, comprising of retired officials of the Railways.

Under such circumstances, the petitioner has approached this court. It is pertinent to mention that neither party agreed to the names suggested

by each of them. The arbitration clause is a part of the General Conditions of Contract. The General Conditions of Contract were made applicable to the subject contract. The General Conditions of Contract provide that in case of claim beyond Rs.1 crore, the dispute would be settled by an arbitral Tribunal. It is submitted by the petitioner that the claim of the petitioner would be beyond Rs.6 crores. Thus, according to the General Conditions of Contract, an arbitral Tribunal comprising of three Members shall adjudicate the disputes between the parties.

Accordingly, this application is disposed of by appointing Mr. Sabyasachi Chowdhury, learned senior Advocate, Bar Library Club, as the petitioner's nominee and Mr. Sourav Sen, learned senior Advocate, Bar Association Room No.2, as the respondents' nominee and Hon'ble Justice Samapti Chatterjee [Retd.] a former Judge of this court as the presiding Arbitrator to adjudicate upon the dispute between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

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

The Members of the Tribunal shall fix their own remuneration as per the schedule of the Act.

AP-COM/1072/2024 is accordingly, disposed of.

(SHAMPA SARKAR, J.)