

OCD -6

ORDER SHEET

AP-COM/1098/2024

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

EMC LIMITED

VS

TATA POWER SOLAR SYSTEMS LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 27th January 2025.

Appearance:

Mr. Ratnanko Banerjee, Sr.Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Rishabh Karnani, Adv.

Mr. Pranav Sharma, Adv.

.... for the petitioner

Mr. Shivam Sinha, Adv.

Mr. Devyanshu Sharma, Adv.

Ms. Diksha Ghosh, Adv.

...for the respondent

The Court: This is an application for appointment of a learned Arbitrator.

The petitioner submits that there are disputes between the parties to the contract. Such disputes will have to be resolved by an arbitral tribunal, to be appointed by the parties. Mr. Banerjee, learned senior advocate refers to the

clauses of the agreement which talks about reference of disputes arising out of the said agreement to a panel of two arbitrators, each to be appointed by the parties. According to the petitioner, the dispute arose when the respondent refused to renew the performance bank guarantee, but claimed payment on account of operation and management charges. On the other hand, the petitioner claims to have huge claim towards losses suffered due to low power generation. Mr. Banerjee draws the attention of the Court to the notice invoking arbitration, wherein, the disputes have been elaborated.

Mr. Shivam Sinha, learned advocate for the respondent submits that the provision for adjudication of the dispute by two arbitrators, as per the dispute resolution clause, is contrary to law. The respondent, in principle, does not deny that there are disputes between the parties and that, there is a dispute resolution clause. The respondent opposes reference of the dispute to a panel of two arbitrators, with each party choosing its nominee and submits that such procedure is contrary to law. Both parties agree before this Court that the disputes may be referred to a sole arbitrator to be appointed by the Court in terms of Section 10 sub-section (2) of the Arbitration and Conciliation Act, 1996. However, the parties object to each other's nominee.

Under such circumstances, the application is disposed of by appointing Justice Girish Chandra Gupta (retired), former Chief Justice of this Court, as the sole arbitrator, to arbitrate upon the disputes between the

parties. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

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