

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Pronounced on: July 01, 2013

+ ARB.P. No.382/2012

REINFORCED EARTH INDIA PVT LTD Petitioner
Through Mr.Gurinder Pal Singh, Adv. with
Mr.Nitin Mangla, Adv.

versus

M/S GURUNANAK ENGINEERING SERVICES Respondent
Through Mr.Rohit Kumar, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioner is a company incorporated under the Companies Act, 1956 with its registered office in New Delhi. The respondent, Gurunanak Engineering Services, is a company having its registered office in Haryana, which awarded the petitioner a contract for the construction of a Reinforced Soil Retaining Wall for ROB on the Delhi – Mathura Railway line in Faridabad, Haryana.
2. This construction work was supposed to be completed within a year from the date of the work order – i.e. by 9th July, 2009. However, on 20th July, 2009, the petitioner had sought an extension, which was not replied to by the respondents. However, by the conduct of the respondents, it is discernible that the work order was extended.
3. The present dispute contains allegations of fraud against the respondent in relation to work which was suddenly terminated and the

financial loss arising from the same and the non-payment of arrears to the petitioner.

4. The petitioner alleges that due to the extension of the work order, by the conduct of the respondent, there was an outstanding amount of ₹15,14,705/-, which was intimated to the respondent on 7th December, 2009. Further, there was another outstanding bill of ₹68,288/- which was also intimated to the Respondent. There was no action from the side of the Respondent in this regard. Moreover, the respondent continued to place orders upon the Petitioner for the supply of materials, drawings etc. as per the scope of the original work order.

5. The petitioner submits that the respondent is liable to pay for these orders as well. The respondent had even requested the petitioner to supply them with detailed drawings of the construction, because, it was requested by the HUDA authorities. This was also sent by the petitioner on 29th April, 2010.

6. The petitioner alleges that in a meeting on 1st December, 2011, the respondent had fabricated a raid by the HUDA vigilance commission and requested the petitioner to remove all its materials from the site while simultaneously reassuring the petitioner that all outstanding amounts will be paid. Moreover, the respondent had returned some of the petitioner's material leftover at the site, worth ₹6,50,000/- accompanied by a letter dated 8th December, 2011, stating that it was rejected material.

7. The petitioner claims this amount as part of the losses caused by the respondent to it. Work on the site, by the petitioner now came to a standstill. The petitioner even warned the respondent, vide letter dated 10th March, 2010 that the equipment could be damaged after prolonged exposure to the

Sun's Ultra Violet rays. It also requested the respondent to pay the amount due to it, which totaled ₹41.7 lakhs vide letter dated January 31st 2012. There was no response forthcoming from the respondent.

8. The respondent denied all allegations of fraud made towards it by the petitioner. The petitioner also filed an RTI application dated 4th June 2012, to gather information about the raid. The response to the said application indicated that there was no raid by the vigilance department of the HUDA and that construction work was ongoing at the site.

9. The petitioner claims that the respondent was in material breach of the work order and that it has defrauded the petitioner, which has resulted in huge loss.

10. The petitioner further alleges that the respondent has used the proprietary information of the respondent without prior permission, and further requests the court to award damages for the same.

11. Finally, the petitioner draws the attention of the court to the arbitration clause, Clause M of the work order, which is herein reproduced, *"If any dispute arises between the "The Main-Contractor" and REIPL in connection with the Contract Agreement, it shall be subject to the provision of this article, be referred to the arbitration and final decision of a person agreed between the parties or jurisdiction of Delhi Courts"*.

12. The petitioner submits that the parties are unable to agree upon an arbitrator, and thereby requests this court to appoint a tribunal. Considering that the arbitration clause does not contain information relating to the procedure for the appointment of an arbitrator, the court will refer to 11(5) of the Arbitration and Conciliation Act, 1996.

13. The respondent argues that the petitioner cannot invoke the arbitration clause, Clause M of the original work order because it stands concluded and that all the arrears payable under it were cleared with the petitioners. Learned counsel appearing on behalf of respondent alleges that subsequent transactions were independent of the work order and therefore cannot be said to come within the ambit of the arbitration clause, which expired with the work order on 9th July, 2009.

14. He further claims that the work order had not been extended and therefore, there is no arbitration agreement and that any machinery requested for after the termination of the work order were independent of the work order and had a separate quotation.

15. The respondent continues to deny all the allegations of the petitioner with regard to the loss suffered by it, claiming that the accounts were falsified. The respondent argues that it had settled all accounts with the petitioner through a payment for ₹10 lakhs as advance for the award of work, ₹5 lakhs in June, 2009 and ₹13,02,208/- as a settlement of the accounts in June, 2009.

16. The respondent also argues that this Court does not have the requisite jurisdiction to hear the matter, since there is no cause of action that has arisen in New Delhi. He argues that work order was placed at Faridabad, the work was supposed to take place in Faridabad and that the respondent has his place of work and business at Faridabad. He further alleges that that the petitioner falsely claimed that the order was signed in New Delhi.

17. The respondent further argues that it has not been in material breach of any of the terms of the work order and that the requirement of producing the diagrams, was the respondent's right as per the original work order and

that he was within his rights to use those drawings to for other activities at the construction site. The respondent denies all allegations made by the petitioner with regard to its fraudulent actions. It especially states that the petitioner is trying to mislead the court by creating fabricating facts of an alleged raid by the Vigilance division of the HUDA.

18. It is pertinent to mention that these transactions still pertain to the original construction on the Delhi-Mathura Railway Line. The main contract was for the construction of a Reinforced Soil Structure. In future correspondence between the parties, they refer to the same construction while dealing with specifics of that particular transaction. At no juncture has the respondent clarified that the materials requested are for a separate transaction. This would therefore indicate that the transactions were related to the original work order and that the arbitration clause would apply since the dispute in question arises out of the original contract.

19. The petitioner has provided the details i.e. lists out a series of transaction which would indicate the extension of the work order and thereby the arbitration clause.

20. The fact of the matter is that the transactions subsequent to the expiry of the work order, regardless of whether expressly extended by the respondent or not, would still form a dispute which was related to the construction of a Reinforced Soil Structure on the Delhi-Mathura line. This would therefore fall squarely within the ambit of Clause M, which clearly specifies that any dispute that arises between the parties in relation to the main contract would be subject to arbitration and final decision of a person agreed between the parties or jurisdiction of "Delhi Courts". There is a force in the submission of petitioners counsel that despite of requests, the

respondent is not either agreeable for arbitration nor the respondent is prepared to give his consent to conduct the arbitration proceedings in Delhi thus, the petitioner has no option but to file the present petition.

21. Further, it must be noted that the respondent has not challenged the existence of a valid arbitration clause in the main work order itself. Therefore, this dispute can be referred to arbitration. In view of admitted position between the parties about the arbitration agreement and in Class-M of the work order stipulates that in case of any dispute, final decision of a person agreed between the parties which would be under the territorial jurisdiction of Delhi Court. Thus, the Court has got the territorial jurisdiction to entertain the present petition. It is open to both parties to raise their claims and counter claims which would be decided in accordance with law.

22. The prayer is accordingly allowed. As agreed, Justice J.K. Mehra (retired Judge of this Court) (Mobile No.9810525650, S-388, GK-II, New Delhi-48) is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties as mentioned in this petition, including their claims and counter-claims. The fees of the Arbitrator be also paid under the said Rules.

23. The petition is accordingly disposed of. No costs.

24. A copy of this order be communicated to the learned Arbitrator as well as the Secretary to the Arbitration Centre forthwith. Copies of the same be also given *dasti* to the learned counsels for the parties.

(MANMOHAN SINGH)
JUDGE

JULY 01, 2013