

GAHC010006222023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./4/2023

M/S MAHASHAKTI INFRASTRUCTURE
APARTNERSHIP FIRM HAVING ITS REGD OFFICE AT AMRUT GARDEN,
SHOP NO. 10 AND 11 PLOT NO. 103, SECTOR-17, KHANDA COLONY, NEW
PANVEL(W) 410206 NAVI MUMBAI, REP. BY ITS PARTNER, NAMELY,
NANURAM KHICHI

VERSUS

PURVASHI OIL AND GAS LIMITED
A COMPANY REGD UNDER THE COMPANIES ACT, 1956 HAVING ITS REGD
OFFICE AT UTPAL ANAND BHAVAN, 14 MILANPUR ROAD, GHY-21, REP. BY
ITS CHAIRMAN AND MD

Advocate for the Petitioner : MR. A BORPUZARI

Advocate for the Respondent : MR M Z AHMED

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

16.10.2023

Heard Mr. A.K. Sarma, learned counsel for the petitioner and Mr. M.Z. Ahmed, learned senior counsel assisted by Mr. A.M. Dutta, learned counsel for the sole respondent.

2. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 has

been preferred seeking appointment of sole Arbitrator by this Court.

3. It is stated that the petitioner is a partnership firm having its office at Navi Mumbai, Maharashtra whereas the respondent is a company incorporated under the provisions of the Companies Act, 1956 with its registered office at Guwahati, Assam.

4. It is the case of the petitioner that the respondent company has been entrusted with the task of a pilot project by the State Government as regards huge silt deposition blocking the drainage system of River Brahmaputra under a project conceptualized as Profit Brahmaputra Project from Sadiya to Dhubri. It is the projected case of the petitioner that as part of the said pilot project, the respondent company is required to hire high-tech dredging contractors. To that effect, a Contract Agreement was executed between the petitioner and the respondent company on 16.02.2022 which provided for initial contract value of Rs. 25 crore with 2% of the contract value as the security deposit. The Contract Agreement had further provided that duration of the contract would be initially for 3 [three] years with provision for extension by 1 [one] year on the same rates, terms and conditions.

4.1. The petitioner has averred that the scope of work for the petitioner has been outlined in the said Contract Agreement. After execution of the Contract Agreement, the respondent allowed the petitioner to commence the work from February, 2022 and accordingly, it had taken steps for transportation of dredging machines. The petitioner has averred that a dispute had arisen between the petitioner and the respondent company with regard to matter of payment related to the contract works it had undertaken under the Contract Agreement.

5. The respondent has also filed an affidavit-in-opposition wherein it had controverted the claims made by the petitioner. The respondent has, however, admitted about execution of the Contract Agreement on 16.02.2022.

6. Clause L of the Contract Agreement dated 16.02.2022, annexed as Annexure-C to the petition, contains a clause for arbitration to the following effect :-

Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of POGL [hereinafter Company] against the Contractor/Vendors or of the Contractor/Vendors against company or regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this agreement shall be resolved through Arbitration under Arbitration and Conciliation Act, 1996, as amended, by the Arbitration and Conciliation [Amendment] Act, 2015 or any statutory modification or re-enactment thereof. The place of Arbitration shall be in Guwahati, Assam, India.

7. Notwithstanding the statements and averments made in the pleadings, the learned counsel for the parties have submitted that as per Section 16 of the Arbitration and Conciliation Act, 1996, it is within the competence of the Arbitral Tribunal to rule on its jurisdiction. Section 16 of the Arbitration and Conciliation Act, 1996 has provided that the Arbitral Tribunal may rule on its own jurisdiction including ruling on any objections with respect to the existence or validity to the arbitration agreement and for that purpose, it can *inter alia* decide as to whether an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. Learned counsel for the parties have conjointly submitted that in such view of the matter, the issue as regards existence of arbitration clause in the Contract Agreement dated 16.02.2022 may be left open for the decision of the Arbitral Tribunal. The learned counsel for the parties have also conjointly submitted that they have agreed for the appointment of Hon'ble Mr. Justice C.R. Sarma, Former Judge of this Court to act as the sole Arbitrator for resolution of the disputes between the parties.

8. In view of the consensus so arrived at as regards the choice of the sole arbitrator, this Court in exercise of the powers conferred by Section 11[5] and Section 11[6] of the Arbitration and Conciliation Act, 1996 appoints Hon'ble Mr. Justice C.R. Sarma, Former Judge of this Court as the sole arbitrator to decide all the disputes arising out of the Agreement executed between the parties, subject to mandatory declaration required to be made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality and ability to devote sufficient time to complete the arbitration proceedings within

the prescribed period as per Section 29-A of the Arbitration and Conciliation Act, 1996.

9. A copy of this order be despatched to Hon'ble Mr. Justice C.R. Sarma, Former Judge of this Court at his address for his information and necessary action. The parties will appear before the learned Arbitrator within a period of 1 [one] month from today and the learned Arbitrator will proceed in accordance with law.

10. With the observations made and the direction given above, the present petition stands disposed of.

JUDGE

Comparing Assistant