

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb P No. 1/2022

Maharishi Technology Corporations Private Ltd ...Petitioner(s)/appellant(s)

Through: Ms. Mehreen Altaf, Advocate

Vs.

Jammu and Kashmir Energy Development Agency JKEDA ...Respondent(s)

Through: Mr. Illayas Nazir Laway, GA.

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R

16.06.2023

1. The present application has been filed by the petitioner seeking appointment of an arbitrator under Section 11 of the J&K Arbitration and Conciliation Act, 1996.
2. The case of the petitioner is that the petitioner participated in an e-tender dated 22.05.2017 floated by the respondents for supply/installation of Solar Home Lighting system and Solar Home system as specified in the tender. Accordingly, the purchase order was issued in favour of the petitioner by the respondents on 05.07.2017 for supply, installation, commissioning and maintenance for a period of five years of W-LED based Solar Home System (Model-IV) for a quantity of 30,000 Nos. (in the first instance).
3. According to the petitioner, in terms of the said supply order an agreement was executed on 05.07.2017 which provides that the terms and conditions envisaged in NIT/supply order shall be binding on both the parties. The aforesaid NIT contains '*Clause D. Special Instructions*', in which it has been provided under para 5 thereof that in case of any doubt, dispute or

differences arising out of the contract, the same shall be referred to the Arbitrator for arbitration to be appointed under J&K Arbitration and Conciliation Act whose decision shall be final.

4. Pursuant to the aforesaid agreement, the petitioner claims to have supplied the required materials for which it is alleged that he has not received the entire amount.

5. According to the petitioner, respondents issued another supply order in terms of letter dated 05.04.2018 for supply of additional quantity of 30,100 no's W-LED based Solar Home Systems (Model-IV).

6. It has been submitted by learned counsel for the petitioner that in the subsequent supply order dated 05.04.2018, it is also mentioned that all the terms and conditions shall be same as envisaged in the earlier supply order dated 05.07.2017 and as per NIT.

7. It is alleged that pursuant to the subsequent supply order, the petitioner had acquired the materials and supplied part of the materials to the respondents but the respondents have not accepted the remaining supply for reasons best known to them and the petitioner has not been paid by the respondents for the material supplied.

8. According to the petitioner, the petitioner served a notice upon the respondents on 26.11.2019, informing the respondents to accept the remaining units in terms of the subsequent supply order dated 05.04.2018 and also make payment for the materials already supplied or to refer the matter to arbitration as per Clause 5 of "Special Instructions" in the NIT if the respondents do not make payment since by refusal of payment, a dispute can be said to have arisen. According to the petitioner, the respondents did not respond to the said notice. Thus, having no other alternative, the petitioner has approached this

Court under Section 11 of the J&K Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator in terms of the agreement/NIT.

9. In this petition, the respondents have objected to the appointment of Arbitrator on the ground that though the NIT may contain an arbitration clause, yet it will not apply to the material supplied based on the subsequent supply order as no agreement was entered between the supplier and respondents for the subsequent supply order. It has been submitted that in respect of the first supply order dated 05.07.2017, an agreement was duly executed between parties on 05.07.2017 which contained an arbitration clause, but in respect of second supply order dated 05.04.2018, no such agreement was executed as mentioned in the reply filed to the writ petition. Hence, there was no scope for settling the dispute through arbitration in respect of the dispute arising out of the subsequent supply order dated 05.04.2018. It has been submitted by learned counsel for the respondents that the dispute has arisen in respect of the second supply order dated 05.04.2018 and since no agreement was executed between the parties which contains an arbitration clause, the dispute between the parties cannot be referred for arbitration.

10. Learned counsel for the respondents by referring to the written reply filed by the respondents has also submitted that after placement of the second supply order, the petitioner did not execute the agreement with the respondents and in absence of any agreement which was to be executed within a period of 15 days after placement of supply order, the supply order automatically gets cancelled as laid down in the terms and conditions of the NIT.

11. Heard learned counsel for the parties and perused the materials on record.

12. From the above, it appears that there was an NIT for supply of certain materials for which the petitioner was given supply order for supply of the materials mentioned in the NIT. It is not in dispute that the NIT contains an arbitration clause to the effect that if any dispute arises between the parties, the matter is to be referred to the arbitrator.

13. The petitioner has made a specific claim that two supply orders were issued. One was issued on 05.07.2017 for which an agreement was signed/executed which contains a clause that the terms and conditions mentioned in the NIT shall be applicable. The NIT contains an arbitration clause. Therefore, *ipso facto*, the said agreement can be said to have contained the arbitration clause which is mentioned in the NIT.

14. As regards the second lot of supply, in terms of supply order dated 05.04.2018, though no agreement was executed, yet the parties would be bound by the terms of NIT, and since the NIT contains an arbitration clause, whether the parties subsequently executed any agreement or not, it will have no effect as far as appointment of Arbitrator is concerned as the NIT contains an arbitration clause and the second supply order issued on 05.04.2018 was pursuant to the aforesaid NIT.

15. What this Court also has noted is that the subsequent supply order dated 05.04.2018 clearly mentions that the said supply order is in continuation of the supply order dated 05.07.2017. The said subsequent supply order dated 05.04.2018 also mentions that all the terms and conditions shall remain same as envisaged in the earlier supply order and as referred in the supply order and as per NIT.

Hence, it can be safely concluded without any doubt that the subsequent supply order 05.04.2018 will be covered by the agreement pertaining to the earlier supply order dated 05.07.2017 and NIT which

contains an arbitration clause. Thus, execution or non-execution of a separate agreement for the subsequent supply order containing an arbitration clause, therefore, becomes irrelevant. Though, learned counsel for the respondents has vehemently argued that unless an agreement is executed which contains an arbitration clause, the matter cannot be referred for arbitration, as observed above, it would have hardly any bearing on the matter as the second lot of supply in terms of the subsequent order dated 05.04.2018 was made as per the terms and conditions of NIT, which contains an arbitration clause.

16. Accordingly, this Court proceeds to appoint Mr. Justice M.K. Hanjura (Former Judge of this High Court), as the sole Arbitrator who shall proceed in the matter to decide the dispute between the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and make the award in accordance with law, after charging the prescribed fee along with incidental expenses to be shared by the parties. Ld. Arbitrator be accordingly informed

17. With the above observation and direction, the petition stands disposed of.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
16.06.2023
Junaid