

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(Through Virtual Mode)**

Sr. No.7

CJ Court

Case: Arb P No.29/2023

M/s ACE Engineering Company

...Petitioner(s)/Appellant(s)

Through: Mr. Jahangir Ganai , Sr. Advocate
with
Mr. Junaid Bin Azad, Advocate

v/s

Union of India and others

.... Respondent(s)

Through: Mr. T. M. Shamsi, DSGI
Ms. Rehana Qayoom, Advocate

CORAM : HON'BLE THE CHIEF JUSTICE

ORDER (ORAL)

16.09.2023

N.KOTISWAR SINGH-CJ

1. I have heard Mr. Jahangir Ganai, learned senior counsel for the petitioner, Mr. T. M. Shamsi, learned DSGI for the respondents and perused the record annexed with the petition.

2. The petitioner has filed the instant petition under Section 11(6) of the J&K Arbitration and Conciliation Act, 1997 (hereinafter referred to as "Act") seeking a direction for reference of the dispute arising out of the contract executed between the parties, being No. 180770 dated 11.05.2009 with regard to construction of OTM accommodation for EME Btn, and field workshop company at Baramulla, *inter se* the parties, to an independent Arbitrator, on the

strength of averments made and grounds taken in the instant arbitration application.

03. The facts which emerge from the records are that a contract bearing contract number being 180770 dated 11.05.2009 came to be awarded to the petitioner-Company by the Brig. Chief Engineer Accepting Officer and, accordingly, an agreement came to be executed between the parties, which contains an arbitration Clause No. 70 (General conditions of contracts), which provides the mode for resolution of disputes and differences between the parties through arbitration.

The clause 70 (General conditions of contracts) reads as under:-

“All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.”

04. Learned counsel for the petitioner-Company submits that petitioner company after having completed work up to 50%, vide communication dated 17.10.2012 issued by the Garrison Engineer, 969 EWS was directed to stop the work on the buildings due to alleged variations noticed in SBC Values by the Technical Examiner of the Works Northern Command. It is stated that thereafter, the petitioner sought permission for recommencement of work after expiry of the cooling period of more than four months as laid down in Condition 9 of IAW 2249. However, the said request was not acceded to by the respondents. It is stated that the petitioner again vide letter dated 05.08.2013 approached the respondents for treating the suspension of work as

abandonment of work by the department. The said request was also not accepted. Resultantly, the petitioner sought for release of payment for the work done and also for the loss suffered on account of non-completion of the work as mentioned in the legal notice dated 22.03.2023.

5. However, there was no response from the respondent-authorities to the said legal notice. In the legal notice (supra) it was also mentioned that in case the disputes are not settled amicably, Clause 70 of the General Conditions of Contract will be invoked.

6. Objections have been filed by the respondents on 15.08.2023, stating that the petitioner has not completed the work and he could not have invoked the arbitration clause without completing the work as provided in the Clause 70 of IAFW-2249 (General conditions of contracts). In the objections it has been further averred that the petitioner has not followed the procedure as mentioned in Clause 70 which is the prerequisite condition for invoking the arbitration clause for referring the disputes to the arbitrator.

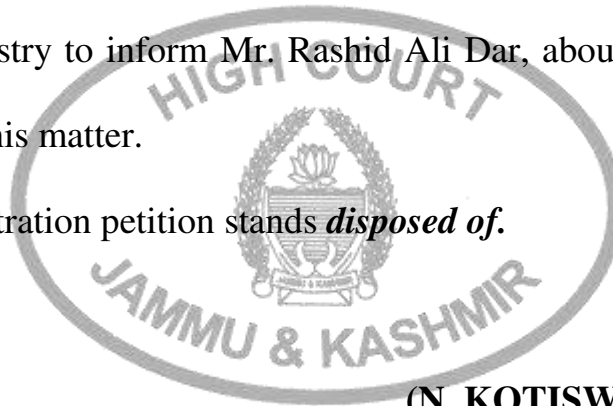
6. Having heard learned counsel for the parties and on perusal of the record, this Court is of the view that as regards non-completion of work, since the terms of the contract had come to an end, it shall be deemed to have been determined by efflux of time, Clause 70 of the General Conditions of Contract *inter alia* provides that unless both the parties agree in writing, reference shall not take place until after the completion or alleged completion of the work or termination or determination of the Contract under Conditions Nos. 55, 56 and 57. This Court is of the view that the Clause No. 70 of the General Conditions of Contracts will be applicable to the parties for reference of disputes to the arbitrator when the terms of the contract expires by efflux of time.

7. In view of the aforesaid facts and circumstances, there appears to be no legal impediment as per the conditions embedded in the contract for seeking reference of the disputes to the arbitrator.

9. Accordingly, I appoint Mr. Rashid Ali Dar, (Retd.) Judge of High Court of J&K and Ladakh, resident of Syedabad Colony Village Sheikhpura Budgam as the sole arbitrator, who shall proceed in the matter in accordance with the provisions of the Act. The arbitrator shall, after affording an opportunity of hearing to both the parties, who are at liberty to raise all the preliminary objections before the arbitrator, make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties.

10. Registry to inform Mr. Rashid Ali Dar, about his appointment as the arbitrator in this matter.

11. Arbitration petition stands *disposed of*.



(N. KOTISWAR SINGH)
CHIEF JUSTICE

Jammu
16.09.2023
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