



Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Arb.P. No. 3 of 2024

Date of Decision: 12.07.2024

M/S Dineshchandra R. Agarwal
Infracon Pvt. Ltd.
Through its Authorized Representative
Mr. Lokesh Bansal, 401, The Grand Mall,
SM Road Ambawadi, Ahmedabad
Gujarat- 380015

:::Petitioner

-Vs-

1.Union of India
Through HQ Chief Engineering (AF)
Shillong Zone,
Elephant Falls Camp
PO: Nonglyer, Shillong – 793009

2.The Engineer-In-Chief
Military Engineer Services
HQ of Ministry of Defence (Army)
Kashmir House, Rajaji Marg
New Delhi – 110011

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge



Appearance:

For the Petitioner/Appellant(s) : Ms. R. Mittal, Adv.
Mr. R. Pahsyntiew, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
----	---	--------

ii)	Whether approved for publication in press:	Yes/No
-----	---	--------

Oral:

1. By way of this application under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the 'Act') the petitioner company is seeking the appointment of a sole Arbitrator to resolve the disputes between the petitioner and the respondent.

2. The brief facts are that disputes arose from a contract agreement between the petitioner and the respondent Military Engineering Services (MES), for execution of resurfacing of runway and allied works at the Hasimara Air Force Station, and that after the completion of the work, though the petitioner had submitted its final Running Account Receipt (RAR) and the Final Bill along other claims on 17.12.2021, to the respondent, the payment against the final RAR dated 17.12.2021, was



delayed and the funds of the petitioner were blocked, and the payment was made only on 31.03.2022, and payment for the Final Bill was made only on 05.07.2022, after more than 7 months from the date of submission of the Final Bill.

3. As many issues remained unresolved, the petitioner formally requested the respondent for arbitration citing Clause – 70 of the General Conditions of Contracts. However, as the respondent did not appoint the Arbitrator, the petitioner is therefore before this Court by way of this instant application for appointment of a sole Arbitrator.

4. I have heard learned counsel for the parties. Dr. N. Mozika, learned DSGI for the respondents has in his submissions though raising questions of maintainability, has however submitted that, if essential an Arbitrator be appointed from the list of names mentioned in letter dated 06.06.2024 (Annexure – 4 to the affidavit-in-opposition).

5. The learned counsel for the petitioner submits that they have no objection if Shri. Shorabh Mathur shown at Serial No. (d) in the said letter, be appointed as the sole Arbitrator.

6. Accordingly, as agreed to by the parties, and as per Clause - 70 of the General Conditions of Contracts, which is reproduced herein below, Shri. Shorabh Mathur is therefore appointed as sole Arbitrator to



adjudicate upon all the issues that may be raised.

“70. Arbitration – 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 a Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division II of Institution of Surveyor (India) recognized by the Govt. of India to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government’s right of recovery from the Contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties,



asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual, item of dispute. The arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims.

The venue of Arbitrator shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the Contract.”

7. As ordered above, the instant application accordingly stands closed and disposed of.

Judge