

GAHC040006452023



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

Case No. : Arb.P./5/2023

THE UNION OF INDIA and 4 Ors.

To be represented by the Engineer in Chiefs Branch, Military Engineer Services, Dte
of Contract Management, Kashmir House, Rajaji Marg, New Delhi 110011 2:
Headquarters Eastern Command

Age:

Occupation :

3: Headquarter of Chief Engineer

Age:

Occupation :

4: Headquarter of Commander of Works Engineer

Age:

Occupation :

5: Assistant Garrison Engineer (Civil) (I)

Age:

Occupation

VERSUS

M/s Phurpa Tsering

To be represented by its proprietor Mr. Phurpa Tsering,
Resident of Village Rungkhung, PO/PS Dirang, District West Kameng, Arunachal
Pradesh.

Advocate for the Petitioner : Marto Kato

Advocate for the Respondent : A Dhar

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

12.08.2024

1. Heard Mr. M. Kato, learned DSGI, counsel for the petitioners/Union of India. Also heard Mr. A. Dhar, learned counsel for the respondent.
2. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 praying for appointment of an arbitrator.
3. It is the case of the petitioners/ Union of India that the petitioners awarded a contract work in favour of the respondent, namely, Provn of OTM Accn Phase-I at Tawang, CA No. CESZ/TAWANG/34 of 214-15 at the estimated cost of Rs. 14,69,94,090.59/-.
4. The construction work basically involves construction of barrack for single living accommodation at Tawang. It is the allegation of the petitioner that the progress of the work was very slow and though extension was granted, the respondent could complete 83.50% of the work since the year 2015-16 and finally, the respondent had stopped the work completely from the month of February, 2020 without completing the work. Accordingly, a final notice dated 12.10.2020, was issued asking the respondent for acceleration of the work subject to conditions that if state of affairs prevailing continue for a period of 15 days from the date of issuance of this notice, the contract shall be cancelled. When the petitioners/Union of India did not receive any response, another letter was issued on 17.12.2020 to the respondent informing the intention of the Union to cancel the contract in terms of Clause 54 of the GCC with effect from 24.12.2020 and the balance work shall be completed through other agency at the risk and cost of the respondent. Subsequently, the balance work was executed with accelerated cost. It is the case of the Union that by a letter dated

29.09.2021, the Union of India asked to respondent to pay the extra expenditure/lost spent in the execution of the work. Having no response, another notice was issued on 27.12.2021 invoking the arbitration clause for appointment of arbitrator. When no response was given by the respondent, the petition is filed.

5. The respondent has not filed any affidavit objecting the present petition. The respondents have not disputed the existence of the arbitration clause. It has not also disputed the existence of the contract entered into between the petitioner and the respondent herein. No dispute regarding the respondent's privity to the contract is also raised.
6. Mr. Dhar, learned counsel for the respondent on instruction from his client submits that his client is not having any objection, if Mr. Mrinmoy Kumar Bhattacharjee, a retired District & Sessions Judge, Assam empaneled as arbitrator by the Gauhati High Court under Notification No. 29 dated 21.05.2024, is appointed as arbitrator for resolution/adjudication of the dispute between the parties. Mr. Kato, learned DSGI has also submitted on instruction that the petitioners are having no objection to it.
7. As there is no dispute as regards the existence of the arbitration clause and also no dispute regarding privity of the contract and that the petitioners have demanded arbitration in terms of the GCC, and the statutory period in the meantime expired, the present petition stands allowed by appointing Mr. Mrinmoy Kumar Bhattacharjee, a former District & Sessions Judge, Assam.
8. This petition stands disposed of.

JUDGE

Comparing Assistant