

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on :23.08.2024

Pronounced on:05.09.2024

Arb P No.2/2022

M/s RK Verma,
22nd Ground Floor, Karan Nagar, Jammu,
through its Proprietor
Romesh Kumar Verma, Age: 53 years,
Son of Hari Ram Verma,
Resident of Devote, Tehsil Majalta,
District Udhampur.

...Appellants/Petitioner(s)

Through: Mr. G.S. Thakur, Advocate.

versus

1. Sterlite Technologies Ltd.,
2nd Floor Budhal House
above SBI Building,
Trikuta Nagar, Jammu, J&K 180012,
India.

2. Ericsson India Pvt. Ltd.,
Local Office Address
DLF Cybercity, Sector 25-A,
Gurgaon – 122002, Haryana, India.

...Respondent(s)

Through: Mr. Dheeraj Nanda, Advocate for No.1.
Mr. Anil K. Kher, Sr. Advocate with Mr.
Inderjeet Gupta and Mr. Yatin Mahajan,
Advocates, for No.2.

Coram Hon'ble Mr. Justice Tashi Rabstan, Chief Justice (Acting)

JUDGMENT

1. The petitioner has filed this arbitration petition under Section 11 of Arbitration and Conciliation Act, 1996 seeking for appointment of an arbitrator for resolution of disputes between the petitioner and respondents herein in view of arbitration clause contained in two Letters of Intent dated 28.01.2016.
2. The facts-in-brief, as gathered from the arbitration petition, are that Sterlite Technologies Limited, respondent No.1 herein, was awarded a contract of laying, installation and commissioning of 9500 Kms of Optical Fiber Cables (OFC). Thereafter, vide Fiber Roll Out and Managed Services Agreement dated 28.03.2015, respondent No.1 herein appointed respondent No.2-M/s Ericsson India Pvt. Ltd. as the Service Provider. Respondent No.2-M/s Ericsson India Pvt. Ltd. further appointed M/s RK Verma, petitioner herein, as its sub-contractor for executing the work of the above nature on link 6122 (Peer Gali Access) and link 6131 (Rampur Access) for laying, installing and commissioning of 49 Kms of OFC.
3. Now the claim of the petitioner-M/s RK Verma is that it completed the entire allotted work, but was paid only Rs.58,31,475/- by respondent No.2 and the balance amount of work done by the petitioner is still outstanding and has not been paid to the petitioner either by respondent No.2 or by respondent No.1. It is contended that in accordance with the Two Letters of Intent dated 28.01.2016 and the settlement arrived at in the Minutes of the Meeting dated 19.05.2017 between the petitioner and respondents 1 & 2, the petitioner is entitled to receive an amount of Rs.2,63,15,000/- from the respondents, however, he has been paid only an amount of Rs.58,31,475/- by respondent

No.2 and the remaining amount of Rs.2,04,83,525/- is still lying outstanding with the respondents. Further, it is contended that the two Letters of Intent dated 28.01.2016 contained an arbitration clause that all the disputes arising out of or in relation to the Letters of Intent are preferable to arbitration. Accordingly, the petitioner while invoking the arbitration clause sent legal notice dated 07.05.2019 to the respondents but they did not pay any heed to the legal notice. Thereafter, the petitioner filed a petition under Section 11 of Arbitration & Conciliation Act before this Court at its Srinagar Bench seeking appointment of an arbitrator. However, the same came to be dismissed on 24.09.2021 on the ground that the petitioner did not follow the mandatory procedure of naming an arbitrator in terms of Letters of Intent dated 28.01.2016.

4. It is contended that thereafter the petitioner again sent a legal notice to the respondents thereby naming an arbitrator and requested respondents 1 and 2 to now appoint 2nd arbitrator and then 1st and 2nd arbitrators were to appoint 3rd arbitrator in terms of Letters of Intent dated 28.01.2016. However, the respondents did not respond to the legal notice. Hence, the present petition for appointment of an arbitrator.

5. Objections have been filed on behalf of respondents. In the objections filed on behalf of respondent No.2, it is averred that there is no amount payable to the petitioner nor there is any dispute between them which is required to be adjudicated upon. Further, it is averred that the petitioner has furnished an undertaking in favour of respondent No.2 admitting that it has no claim left against respondent No.2. Thus, it is averred that the accounts of petitioner and respondent No.2 have already been settled.

6. In the objections filed on behalf of respondent No.1-Sterlite Technologies Ltd., it is averred that respondent No.1 was neither a party to the arbitration agreement nor in any way was privy to the terms and conditions thereof; rather the same was executed between the petitioner and respondent No.2 herein. It is averred that respondent No.2-Ericsson India Pvt. Ltd. was appointed by respondent No.1-Sterlite Technologies Ltd. However, respondent No.2-Ericsson India Pvt. Ltd. further appointed the petitioner-M/s RK Verma as its sub-contractor on Link-6122 (Peer Gali Access) and Link-6131 (Rampur Access) as per its own choice. It is averred that in order to ensure smooth transition and rehabilitation to the sub-contractors engaged by respondent No.2, respondent No.1 on its own motion invited respondent No.2 including the petitioner herein for material reconciliation. In this tri-partite meeting, the petitioner, on acceptance of fresh Letter of Intent issued by respondent No.1 in favour of petitioner on 20.05.2017, had agreed to complete the left over part of the works which was earlier allotted to petitioner by respondent No.2. It is further averred that since the petitioner had failed to furnish the Performance Bank Guarantee, as such respondent No.1 cancelled the Letter of Intent dated 20.05.2017. As such, petitioner was neither handed over any stores or material required for execution of works allotted under Letter of Intent dated 20.05.2017 owing to non-furnishing of requisite Bank Guarantee nor any work was carried out by the petitioner under the said Letter of Intent.

7. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the file.

8. The case of the petitioner-M/s RK Verma is that in accordance with the Two Letters of Intent dated 28.01.2016 and the settlement arrived at in the

Minutes of the Meeting dated 19.05.2017 between the petitioner and respondents 1 & 2, the petitioner is entitled to receive an amount of Rs.2,63,15,000/- from the respondents, however, he has been paid only an amount of Rs.58,31,475/- by respondent No.2-Ericsson India Pvt. Ltd. and the remaining amount of Rs.2,04,83,525/- is still lying outstanding with the respondents. Since the respondents have disputed the payment of balance amount, therefore, in view of arbitration clause contained in two Letters of Intent dated 28.01.2016, the petitioner-M/s RK Verma has approached this Court through the medium of present arbitration petition for appointment of an arbitrator.

9. A perusal of the file reveals that the two Letters of Intent dated 28.01.2016 were executed between the petitioner and Ericsson India Pvt. Ltd., whereas respondent No.1-Sterlite Technologies Ltd. was not a signatory to these two Letters of Intent containing the arbitration clause. Therefore, respondent No.1-Sterlite Technologies Ltd. though cannot be said to be bound by these two Letters of Intent dated 28.01.2016, yet it is to be seen whether respondent No.1- Ericsson India Pvt. Ltd. could be considered as a party to the two Letters of Intent dated 28.01.2016 on the basis of its role, if any, in the negotiation or performance of the above-mentioned two Letters of Intent.

10. Here, it is to be seen that the petitioner-M/s RK Verma in paragraph-1 of the arbitration petition has itself admitted that respondent No.1-Sterlite Technologies Ltd. looking into the large scale operation appointed respondent No.2-Ericsson India Pvt. Ltd. as the service provider. Thereafter, respondent No.2-Ericsson India Pvt. Ltd. appointed M/s RK Verma-petitioner herein, as its sub-contractor; meaning thereby M/s RK Verma can be construed to have been

acting for Ericsson India Pvt. Ltd. and not for the buyer, i.e., Sterlite Technologies Ltd. Further, a perusal of the file reveals that when respondent No.2-Ericsson India Pvt. Ltd. had appointed the petitioner-M/s RK Verma as its sub-contractor as per its own choice, there was no contractual relationship existed between the petitioner-M/s RK Verma and respondent No.1 herein, i.e., Sterlite Technologies Ltd. Even, the petitioner-M/s RK Verma in paragraph-12 of the arbitration petition has itself admitted that respondent No.1-Sterlite Technologies Ltd. was not a signatory to the two Letters of Intent dated 28.01.2016 containing the arbitration clause. The petitioner-M/s RK Verma has also failed to establish the role of respondent No.1-Sterlite Technologies Ltd. in the performance of two Letters of Intent dated 28.01.2016 nor the petitioner has specifically averred any such thing in the present arbitration petition.

11. As regards the settlement arrived at in the Minutes of the Meeting dated 19.05.2017 between the petitioner and respondents 1 & 2 and subsequent execution of another Letter of Intent dated 20.05.2017 between the petitioner-M/s RK Verma and respondent No.1-Sterlite Technologies Ltd., respondent No.1, i.e., Sterlite Technologies Ltd. has specifically averred that petitioner-M/s RK Verma was never handed over any stores or material required for execution of the left over part of the works under Letter of Intent dated 20.05.2017 because the petitioner-M/s RK Verma had failed to furnish the requisite Bank Guarantee. Therefore, in these circumstances, respondent No.1-Sterlite Technologies Ltd. had no option but to cancel the Letter of Intent dated 20.05.2017. Even, the petitioner-M/s RK Verma has not specifically denied these facts. Further, on one hand the petitioner in paragraph-3 of the arbitration petition has averred that it has completed the entire allotted work in accordance with the two Letters of Intent dated 28.01.2016, whereas, in paragraph-6 of the

arbitration petition, the petitioner has averred that it has completed the whole work on the spot except some left over works; meaning thereby, as per own admission of the petitioner, there were certain works which were yet to be completed in terms of two Letters of Intent dated 28.01.2016.

12. Further, respondent No.2-Ericsson India Pvt. Ltd. claims that it has already made the payments to the petitioner-M/s RK Verma for the works executed by it. In support of its claim, respondent No.2-Ericsson India Pvt. Ltd. has also annexed the undertakings furnished by the petitioner-M/s RK Verma admitting that it has no claim left against respondent No.2. As regards the execution of work at Link No.6122 Peer Galli Access, the petitioner has issued No Dues Undertaking specifically admitting that it has received an amount of Rs.30,25,425/- from M/s Ericsson for the invoices raised and that no further claim or invoice pending against M/s Ericsson. Similarly, the petitioner has issued another No Dues Undertaking in respect of Link No.6131 Rampur Access admitting that it has received an amount of Rs.29,66,045/- from M/s Ericsson for the invoices raised and that no further claim or invoice pending against M/s Ericsson. Therefore, in view of these undertakings issued by the petitioner-M/s RK Verma, nothing remains to be adjudicated upon.

13. Viewed thus, we do not find any merit in the arbitration petition and the same is, accordingly, dismissed.

Jammu
05.09.2024
 (Anil Sanhotra)

(Tashi Rabstan)
Chief Justice (Acting)

Whether the order is reportable ?
 Whether the order is speaking ?

Yes/No
 Yes/No