

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on May 09, 2016

+ O.M.P.(T) (COMM.) 34/2016

NATCONN ENGINEERING PVT. LTD.

(NEPL)

..... Petitioner

Through: Mr. A. Mishra, Adv.

versus

JITF WATER INFRASTRUCTURE

LIMITED

..... Respondent

Through: Mr. A.S. Chandiok, Sr. Adv.
with Mr. Rajesh Chhetri, Mr.
Upadhyay, Mr. Rajeev
Chhetri, Mr. Akash, Mr. R.
Sharma, Ms. Meenakshi
Rawat, Advs.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. This Petition has been filed under Section 14 of the Arbitration and Conciliation Act, 1996 challenging the order dated 16th April, 2016 passed by the learned Arbitrator with the following prayers:

“a. Allow the present petition by setting aside the impugned order dated 16.04.2016 passed by the Ld. Sole Arbitrator Shri V K tyagi in the arbitration proceedings between M/s JITF Water Infrastructure Limited vs M/s Natconn Engineering Private Limited and decide on the

termination of the mandate of the Ld. Sole Arbitrator.

b. Replace the Ld. Arbitrator by the new arbitrator duly appointed by this Hon'ble Court in exercise of its powers under section 14 of the Act.

c. Pass any such further and/ or other orders as this Justice Hon 'ble Court may deem fit and proper in the interest of justice.”

2. In the impugned order, learned Arbitrator has rejected I.A. 1/2016 filed by the petitioner herein challenging the very appointment of learned Arbitrator on the ground that the appointment was not by the Vice-Chairman and Managing Director of the respondent company.

3. The petitioner's contention was letter dated 2nd November, 2015 appointing Mr. V.K. Tyagi as the sole Arbitrator by Mr. Indresh Batra, who is admittedly not the Managing Director of the respondent Company. Petitioner also contended that even if Indra Batra is not the Managing Director of the respondent Company and even assuming that he is the Vice-Chairman of the respondent Company, the Arbitrator could not have been appointed without the Managing Director of the respondent Company and in that

eventuality, the mandate of the learned Arbitrator shall be terminated if he becomes *de-jure* unable to perform functions.

4. The respondent's case was that Mr. Rakesh Grover serves as the Managing Director and Vice-Chairman of the respondent company and clause 20.3 of the agreement empowers the Vice-Chairman / Managing Director of the respondent company to appoint a sole Arbitrator.

5. It was also the stand of the respondent that Mr. Rakesh Grover being the Vice-Chairman and Managing Director of the Company had duly appointed Mr. V.K. Tyagi as the sole Arbitrator on 30th October, 2015. It was also the stand that Mr. Indresh Batra who while sending the communication dated 2nd November, 2015 has inadvertently referred that the learned Arbitrator has been appointed. However, immediately noticing the anomaly, rectification in this regard was issued on 3rd November, 2015 by Mr. Rakesh Grover, Vice-Chairman / Managing Director of the respondent Company.

6. The reasoning of the learned Arbitrator while rejecting the application is mentioned in Para 19 and 20 of the order of the learned Arbitrator, which I reproduce as under:-

“19. I have considered all the documents and submissions made by the parties with regard to my appointment as Arbitrator. As narrated here-in-before, the Claimant through their reply have clarified the entire position leading to the appointment of myself as Arbitrator. The claimant has also filed the copy of the letter dated 15th March, 2016 from Shri Rakesh Grover, VC & MD of the Claimant Company reiterating and reaffirming the appointment of myself as Sole Arbitrator which in the first instance had been communicated vide Shri Indresh Batra’s letter dated 3rd November, 2015. After this submission dated 15th March, 2016 from Shri Rakesh Grover, who is the Vice-Chairman and Managing Director of the Company, no controversy really remains to be resolved in respect to the appointment of myself as Arbitrator. The IA-1/2016 does not merit any consideration on this account as well.

20. With the aforesaid facts of the case, I V.K. Tyagi did not consider it necessary to recuse and withdraw from the present arbitral proceedings as Sole Arbitrator as no case has been made out by the Respondent in I.A.-1/2016 either under law or facts as narrated here-in-below.”

7. During the course of the submissions, learned counsel for the petitioner has reiterated the stand as was taken before the learned Arbitrator. That apart he has drawn my attention to various documents.

8. It is the contention of the learned counsel for the petitioner that appointment of Mr. V.K. Tyagi, as the sole Arbitrator by Mr. Indresh Batra is illegal and the mandate of the learned Arbitrator needs to be set aside in terms of prayer made in the petition.

9. Mr. Amarjeet Singh Chandiok, learned Sr. Counsel appearing on behalf respondent relied upon the documents, i.e., Board Resolution dated 21st September, 2015 and as per resolution Mr. Rakesh Grover, whole-time Director was re-designated as Vice-Chairman and Managing Director and has referred to ROC (Registrar of Companies) Form DIR-12 to contend that Mr. Rakesh Grover was appointed as the Managing Director on 15th October, 2015 itself. In other words, it is his case that Mr. Rakesh Grover, being the competent authority has rightly issued the appointment letter of Mr. V.K. Tyagi as the sole Arbitrator.

10. On 2nd May, 2016, learned counsel for the petitioner was granted time to file response to the documents filed by Mr. A.S. Chandiok, which were not a part of the arbitral record.

11. In his submission, learned counsel for the petitioner would submit that Board Resolution dated 21st September, 2015 was allegedly available with the respondent and was not filed with the reply before the Arbitrator. Hence the said document cannot be allowed to be relied upon by the respondent at this stage under the alleged ground of inadvertent error.

12. He also states even the document dated 28th November, 2015 was signed by Mr. Rakesh Grover as whole-time Director when on that date Resolution dated 21st September, 2015 was already in place. He states similar is the position with Extraordinary General Meeting held on 15th October, 2015, wherein Mr. Rakesh Grover had signed the document as a whole-time Director. In order words, it is his submission that in terms of documents dated 15th October, 2015 and 28th November, 2015, which were executed after 21st September, 2015, when Mr. Rakesh Grover was alleged to have been designated as Vice-Chairman and Managing Director, yet he signs the documents dated 15th October, 2015 and 28th November, 2015 as whole-time Director warrants consideration and cannot be left in abeyance.

13. It is also stated there was no reasoning given as to why these documents were not filed along with the reply on 17th March, 2016. It is also his submission, the document dated 3rd November, 2015 on which reliance was placed was not in-existence as on that date and has been prepared afterwards.

14. Having considered the submissions both oral and written submission of the learned counsel for the petitioner and Mr. A.S.

Chandiok, learned Sr. Counsel for the respondent, the plea raised by the learned counsel for the petitioner is that Mr. Rakesh Grover was not the Vice-Chairman and CMD of the respondent Company and such the appointment of Mr. V.K. Tyagi as the sole Arbitrator by Mr. Indresh Batra is not proper and the mandate of the Arbitrator needs to be set aside.

15. Suffice to state that the respondent has relied upon the Board Resolution dated 21st September, 2015. Pursuant thereto, the documents of the Registrar of the Companies shows the appointment of Mr. Rakesh Grover as the Managing Director on 15th October, 2015. In the written submissions now filed by the learned counsel for the petitioner the resolution dated 21st September, 2015 re-designating Mr. Rakesh Grover as Vice-Chairman and MD of the Company has not been disputed. Even the record of the ROC has not been disputed. The only contention is that when in the subsequent documents of 15th October, 2015 and 28th November, 2015, Mr. Rakesh Grover had signed them as a whole-time Director of the Company, the same would nullify the documents dated 21st September, 2015 and ROC record. I am unable to agree with the learned counsel for the petitioner.

16. The signing of the documents dated 15th October, 2015 and 28th November, 2015 by Mr. Rakesh Grover as a whole-time Director would not imply that he was not re-designated as Vice-Chairman and Managing Director of the Company. That apart, I note before appointment of Mr. V.K. Tyagi as the Arbitrator, Mr. Rakesh Grover addressed a letter dated 31st October, 2015 to Mr. Indresh Batra wherein he states as under:

*“Date: October 30/31, 2015
Dear Batraji,*

Since Sri V K Tyagi has given his consent to act as Sole Arbitrator in respect of dispute between JWIL and NATCONN, I hereby appoint him a Sole Arbitrator to adjudicate upon the dispute. I will request Sri V K Tyagi to make an endeavour to finalise the dispute at the earliest.

You, may accordingly send a letter to Sri Tyagi, intimating his appointment as Arbitrator with a copy to me.”

17. It appears that Mr. Indresh Batra issued a letter dated 2nd November, 2015 on the basis of this communication of Mr. Grover. In the said communication, i.e., 30/31st October, 2015, Mr. Rakesh Grover, has clearly stated that Mr. V.K. Tyagi has given his consent to act as a sole Arbitrator and it is Mr. Rakesh Grover, who is appointing him as the sole Arbitrator to adjudicate upon the disputes.

18. If this letter is read in conjunction with the Minutes of the Board resolution dated 21st September, 2015 and the ROC record, it is clear that Mr. V.K. Tyagi, was rightly appointed by Mr. Rakesh Grover, who was the Vice-Chairman / MD of the Company.

19. In view of above, I do not find any merit in the instant petition. Same is accordingly dismissed.

I.A. No. 5362/2016

Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

MAY 09, 2016

jg