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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 326/2016

SAHAKAR GLOBAL LTD

..... Petitioner

Through: Mr. Rakesh Sinha with Mr. Pawan
Kumar Bansal, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mukesh Kumar and Ms. Bharana,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

20.10.2016

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) filed by the Petitioner, Sahakar Global Limited, against the Respondent, National Highways Authority of India (NHAI), seeking the appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Contract Agreement dated 18th March, 2015 whereby the Respondent-NHAI engaged the Petitioner for collection of user fees at Tanuku Toll Plaza from the designated vehicles at the specified rates. The said Contract Agreement contains an arbitration clause. In terms thereof, the Courts in Delhi were to have the exclusive jurisdiction over all disputes arising under it.

2. The parties, subsequently, entered into a Settlement-cum-Close Out Agreement (SCOA) on 1st October, 2015. The recitals to the SCOA narrate

the history and Clause (b) of the recital expressed intention of the parties that “the agreement dated 18th March, 2015 with the Contractor for Tanuku toll plaza is to be prematurely foreclosed.” It is also noted in Clause (c) of the recital that the Petitioner represented to NHAI by its letter dated 27th July, 2015 regarding decrease in toll revenues due to diversion of traffic on account of opening of new bridge across Godavari River on SH by Government of Andhra Pradesh. After referring to “compulsions of parties stated in para (b) and (c) above”, SCOA in para (d) of the recital stated that “both the parties felt appropriate to foreclose the agreement and desirous to deduce the same in writing to settle amicably all the disputes/contractor’s claims etc.”

3. The specific clauses of the SCOA relevant to the present petition reads as under:

"(i) The Contractor unconditionally, unequivocally, without any demure and on its own volition has agreed upon to the proposal of Authority to take exit from the work of collection of user fee at Tanku Toll Plaza upon issue of notice by authority clearly specifying the date and time of exit. The Contractor undertakes to keep depositing the remittance duly complying with the provisions of the contract agreement dated 18.03.15 till such exit. However, Contractor understand that. Authority is neither obligated nor committed to issue such exit notice and that this arrangement will not give any right to the Contractor to claim exit from the contract agreement dated 18th March 2015.

(v) The Authority and the Contractor mutually agree and abide by this Agreement and hold that both the parties do not have any dues/claim against each other.

(vi) The Contractor unconditionally, unequivocally, without any demur and its own volition undertake that the said settlement is full

and final in all respect with regard to all dispute pertaining to operation of Tanuku Toll Plaza including force majeure claim opening of new bridge across Godavari River on SH.

(viii) This agreement is in full and final settlement of the claim/dues if any raised by both the parties and aforesaid contract comes to an end after execution of this agreement as stated in para (i) above.

(x) This agreement shall be subject to jurisdiction of the Hon'ble High Court of Delhi.”

4. It appears that in terms of Clause (i) of SCOA, NHAI on 27th October, 2015 issued an exit notice to the Petitioner “for taking exit from the work of collection of user fee at Tanuku Toll Plaza w.e.f. 31st October, 2015 at 24.00 hours duly complying with the provisions of the contract agreement dated 18th March, 2015 and supplementary agreement dated 1st October, 2015.” This was followed by another letter dated 30th October, 2015 written by NHAI to the Petitioner stating that the exit orders issued on 27th October, 2015 were being “kept in abeyance until issuance of further orders.” It is not in dispute that ultimately the exit of the Petitioner from the contract took place on 5th December, 2015.

5. The dispute now arising between the parties is whether the exit of the Petitioner from the contract took place as originally proposed from 31st October, 2015 at 24.00 hours or with effect from 5th December, 2015?

6. The case of the Petitioner is that NHAI could not place in abeyance the exit orders issued by its letter dated 27th October, 2015.

7. Mr. Rakesh Sinha, learned counsel for the Petitioner contends that the

SCOA was only a supplementary agreement as described by NHAI itself and therefore, notwithstanding the SCOA, the arbitration clause in the main agreement dated 18th March, 2015 continues. Mr. Sinha, insists that for the purpose of Section 11 (6A) of the Act, the examination of the Court is confined to the question whether there exists an arbitration agreement between the parties.

8. Mr. Sandeep Sethi, learned Senior Counsel for the NHAI, on the other hand points out that on a collective reading of Clauses (v) and (vi) of the SCOA, there is no arbitrable dispute under the main contract agreement which can be referred to arbitration. The dispute that is now being raised arises from the SCOA dated 1st October, 2015, which in any event does not contain an arbitration clause. Mr. Sethi referred to the decision of the Division Bench of this Court in *Hari Vansh Chawla v. M/s Prem Kutir Cooperative Group Housing Society Limited AIR 2009 Delhi 35* where in similar circumstances the Court held that after signing of the full and final settlement no arbitrable dispute survives. Mr. Sethi also referred to the decision dated 4th October, 2016 by this Court in Arbitration Petition No. 422 of 2016 (*DRA-DPJ Tollways Private Limited v. National Highways Authority of India*).

9. The above submissions have been considered. A collective reading of clauses (v) and (vi) of the SCOA makes it explicit that the Petitioner has, unconditionally, unequivocally, without any demur, undertaken that the SCOA “is full and final in all respect with regard to all dispute pertaining to operation of Tanuku Toll Plaza including force majeure claim opening of

new bridge across Godavari River on SH”. The word “including” in the above clause (vi) makes it clear that the settlement is full and final and in respect of all the claims that the Petitioner may have against the Respondent.

10. The Petitioner is not seeking to resile from the SCOA which unequivocally states that there is no pending claim of one party against the other. Secondly, after the SCOA, it is not possible for the Petitioner to contend that any claim can be made with regard to the main contract agreement dated 18th March, 2015. The present dispute, according to the Petitioner, arose from the action of NHAI keeping in abeyance the exit notice dated 27th October, 2015 issued in terms of clause (i) of the SCOA. In fact, the precise dispute is whether the exit of the Petitioner should be reckoned from 31st October, 2015 at 24.00 hours. This is, therefore, not a dispute arising out of the main contract between them but from the SCOA. Admittedly, the SCOA itself does not contain any arbitration clause.

11. For the reasons mentioned hereinabove, viz., there is no arbitrable dispute between the parties *qua* the main contract agreement itself which can be referred to arbitration and the arbitrable dispute that has arisen and the reference of which is sought arises from the SCOA which does not contain any arbitration clause, the prayer made in this petition cannot be granted.

12. The petition is accordingly dismissed with no orders as to costs.

S.MURALIDHAR, J

OCTOBER 20, 2016/Rm