

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

% Order delivered on: 3rd August, 2016

+ **Arb.P.No.341/2016**

RAVI INFRASTRUCTURE & PROJECTS Petitioner
Through Mr.Rajiv Bhatnagar, Adv. with
Mr.Aseem Chaturvedi &
Mr.Jeevan Ballabh Panda, Adv.

Versus

KSS PETRON PRIVATE LIMITED Respondent
Through None

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The petitioner has filed the present petition under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") seeking for an appointment of sole Arbitrator to adjudicate the disputes pending between the parties in terms of Clause 45 of the Work Order bearing No KSSIPL/EPC-02/ONGC/Ukon-PGP dated 26th October, 2010 ("Work Order"). As per the terms of Clause 45 of the Work Order, the petitioner by its notice dated 22nd March, 2016 nominated Retired Judge of the Supreme Court to adjudicate upon the disputes and differences between the parties. However, the respondent disagreed with the said nomination and proposed the name of Mr. Sanjay Goyal of Quantum Meriut Consultants instead.

2. The petitioner did not agree to the nomination proposed by the respondent and as such in view of the failure of the parties to agree on the sole Arbitrator, the petitioner has filed the present petition.
3. The brief facts of the case are that in the year 2010, Oil & Natural Gas Corporation Limited (ONGC) invited bids *inter alia* for services of main pipe laying (20" & 16") for Up-gradation of Konaban GGS and Pipeline Grid Project of Tripura Asset (UKon-PGP). The respondent successfully bid for the same and was awarded the Contract by ONGC.
4. On 17th February, 2010 the respondent floated tender for sub-contracting the work of rendering services of main pipe laying (20" & 16") for Up-gradation of Konaban GGS and Pipeline Grid Project of Tripura Asset (UKon-PGP) and the petitioner was declared as the successful bidder.
5. The respondent issued a Work Order bearing WO No. KSSIIPL/EPC-02/ONGC/Ukon-PGP/WO-11 to the petitioner on 26th October, 2010.
6. The case of the petitioner is that even after the expiry of two and half years the respondent had not only not provided a clear Right of Usage (ROU) to the petitioner to commence the work under the Work Order but also that the farmers and landowners over whose land the pipeline was to be laid down, were agitated and there existed immense unrest due to non-payment of land/ crop compensation/ and inadequate land/ crop compensation and the petitioner under these circumstances had to stop further work at the site in view of continued failure and breach on the part of the respondent to address the issues of non-availability of clear-front,

mounting costs of idle manpower and machinery and non-payment against the duly acknowledged /registered Bills.

7. The petitioner submits that on 4th April, 2013 a joint meeting of the representatives of the respondent and the petitioner was held at Gurgaon. It was *inter alia* recorded that the overdue amount of Rs. 53 lacs towards service tax liability be released immediately by the respondent to the petitioner. In October, 2013 another joint meeting of the representatives of the respondent and the petitioner was held at Agartala wherein the respondent *inter alia* acknowledged and admitted to the additional work executed by the petitioner at the request of the respondent for which quantity, rates and amounts payable were duly recorded with the reservation of the petitioner. It is alleged by the petitioner that in October, 2014 the respondent made a part payment of a sum of Rs. 5,00,000/- against its total liability of Rs. 22,83,45,309/- plus interest @ 18% till realization.

8. In the absence of any positive response from the respondent, therefore the petitioner in November, 2015 invoked the dispute resolution mechanism contained in Clause 45(a) of the Work Order [Resolution/Settlement through mutual discussion and negotiation] and again on 9th December, 2015 joint meeting was held between the representatives of the respondent and the petitioner in the presence of the representatives of ONGC at Delhi. On 21st December, 2015 the respondent sent an e-mail to the petitioner requesting for their statement of accounts and other documents. The petitioner sent an e-mail on 23rd December, 2015 to the respondent placing on record the discussions that took place in the meeting dated 9th December, 2015 and also provided the respondent with the statement of accounts and other documents that were sought.

9. It is stated by the petitioner that another joint meeting was held on 2nd February, 2016 between the representatives of the respondent and the petitioner in the presence of the representatives of owner at ONGC's office at Delhi. The respondent vide its e-mail dated 5th February, 2016 sent minutes of the meeting for the meeting held on 2nd February, 2016 and requested the petitioner to sign the said minutes of the meeting. The petitioner vide its e-mail dated 11th February, 2016 denied the contents of the respondent's e-mail dated 5th February, 2016. On 25th February, 2016 the respondent denied the claims of the petitioner and raised a purported counter claim of Rs.9.26 crores against the petitioner.

10. The petitioner therefore invoked the arbitration agreement contained in Clause 45(b) of the Work Order and referred the disputes and differences to arbitration for adjudication and nominated Retired Judge of the Supreme Court. The respondent on 20th April, 2016 responded to the said notice invoking arbitration denying the contents therein and instead proposed the name of Mr. Sanjay Kumar Goyal of Quantum Meruit Consultants.

11. Despite of service, no one appears on behalf of the respondent. The Arbitrator appointed by the petitioner is not acceptable to the respondent, however, the respondent as per communication exchanged between the parties does not dispute that there is an agreement between the parties in which an arbitration clause exists and the disputes have also arisen between the parties.

12. The respondent despite of service has chosen not to appear. Under these circumstances, the prayer made in the present petition is allowed. Justice A.P. Shah, former Chief Justice of this Court

(Mobile No. 9910160007) is appointed as sole Arbitrator to adjudicate the disputes arising out of the agreement between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

13. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the schedule of the amended Act. The parties to appear before the Arbitrator on 23rd August, 2016 at 4.00 p.m. for directions.

14. The petition is accordingly disposed of.

15. Copy of this order be given *dasti* to the learned counsel for the petitioner and a copy thereof be delivered to the learned Arbitrator forthwith.

AUGUST 03, 2016

(MANMOHAN SINGH)
JUDGE