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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 422/2016

DRA-DPJ TOLLWAYS PVT. LTD.

..... Petitioner

Through : Mr Anil Airi, Sr Adv with Mr Ravi
Kishan Chandna, Ms Bindiya L Airi
& Ms Sadhna Sharma, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA.

..... Respondent

Through : Mr S Nandakumar, Mr Parivesh
Singh, Mr Prateek Gupta, & Mr P
Srinivasan, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.10.2016

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes which are stated to have been arisen between the parties in relation to the Concession Agreement dated 16.05.2013. The parties had entered into the said Concession Agreement for operation and maintenance of the four lane NH-1A on OMT basis in the state of Punjab, Himachal Pradesh and Jammu & Kashmir.

2. Admittedly, certain disputes had arisen between the parties in relation to the Concession Agreement as it was the case of the petitioner that it was unable to collect the toll at toll plaza at KM

43+600 in the State of Jammu & Kashmir (Rajbaugh) due to public agitations. The only contention canvassed by the respondent, in opposition to this petition, is that all disputes in relation to the Concession Agreement dated 16.05.2013 stood settled between the parties in terms of the Settlement and Close Out Agreement (hereafter 'the settlement agreement') dated 14.03.2014.

3. The petitioner does not dispute the execution of the settlement agreement but contends that the settlement agreement is void as it was executed without petitioner's free consent. It is the petitioner's case that it was coerced to execute the settlement agreement as that was a precondition for release of the performance bank guarantees furnished by the petitioner. The petitioner further claims that the respondent had also got the Concession Agreement executed fraudulently.

4. It is not in dispute that the settlement agreement was duly performed by the respondent in as much as the bank guarantees and securities furnished by the petitioner were released by the respondent on 18.03.2014 - within a few days of signing of the settlement agreement. Further, in terms of the settlement agreement, an independent agency was also appointed to assess the loss. The independent agency so appointed had, thereafter, submitted a report assessing the loss and, accordingly, a sum of ₹5,65,82,822/- was released to the petitioner on 25.03.2015.

5. Although the petitioner has alleged that it was induced into for signing the settlement agreement as its bank guarantees had been

withheld to exert economic coercion on the petitioner, but the petitioner did not take any such objections prior to the receipt of the amount of assessed loss on 25.03.2014. There is also no material on record, which would lend credence to the submission of the petitioner that it was coerced into signing the settlement agreement.

6. The only reason indicated by the petitioner to persuade this court that it was coerced into signing the settlement agreement is that the respondent had held out a threat to invoke the performance bank guarantees that were furnished by the petitioner to the respondent. However, it is seen that the same were released on 18.03.2014 and the petitioner had not raised any allegation of coercion or undue influence immediately thereafter. Thus, in my view, the aforesaid allegation of coercion is a mere afterthought.

7. The second contention urged on behalf of the petitioner is that a fraud had been played by the respondent at the time of signing of the Concession Agreement. It is the case of the petitioner that the tenders were invited prior to 07.03.2013 and were opened on 07.03.2013. In the meantime, the respondent had appointed another agency to collect the toll, but the said agency could not collect the toll because of agitation by the public; consequently, the toll collection had to be stopped only after eight hours of commencement thereof. The petitioner alleges that the respondent was, thus, well aware of the public agitations and the impossibility of collection of toll at toll plaza at KM 43+600 in the State of Jammu & Kashmir (Rajbaugh), but had concealed this fact from the petitioner.

8. Mr Airi, learned senior counsel appearing on behalf of the petitioner further emphasised that public agitation took place on 21.03.2013, which was after the tender was opened but prior to the execution of the Concession Agreement on 16.05.2013.

9. The agitation referred to by Mr. Airi was concededly a public agitation and it is difficult to accept that the petitioner - who at the material time had bid for tender - would be unaware as to the situation on the ground. It is also relevant to note that the petition is silent as to how and when the petitioner became aware of the public agitation on 21.03.2013 which prompted the petitioner to raise a dispute as to the execution of the Concession Agreement on 19.12.2015 - nearly three years after signing of the Concession Agreement.

10. It is well settled that fraud must be specifically pleaded with full particulars. A mere allegation of fraud would clearly be insufficient to sustain allegations of that nature. As pointed out earlier, the petition is bereft of any particulars as to when and how the petitioner became aware of the alleged fraud.

11. Thus, in my view, the said allegation is merely an afterthought and has been raised only with a view to seek further amounts after the entire amount as per settlement agreement has been received by the petitioner.

12. I find no credible reason whatsoever to accept that the petitioner was coerced to execute the settlement agreement or that it is not a valid agreement.

13. Clause No.(vii) of the settlement agreement is relevant and reads as under:-

“(vii) This agreement is in full and final settlement of the claim/dues if any raised by both the parties and aforesaid contract comes to end after execution of this agreement.”

14. The parties had thus agreed that the settlement agreement is in full and final settlement of all the claims and dues if any raised by both the parties and the Concession Agreement has come to an end. Thus, clearly, the arbitration clause in the Concession Agreement has also perished with the execution of the settlement agreement.

15. In this view of the matter, I am unable to accept that there exists any arbitration agreement between the parties. Consequently, an arbitrator cannot be appointed to adjudicate the alleged disputes regarding the Concession Agreement.

16. The petition is accordingly dismissed.

VIBHU BAKHRU, J

OCTOBER 04, 2016

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