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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 495/2016

M/S. GANGOTRI ENTERPRISES LTD –

D.P. CHOPRA – JV

..... Petitioner

Through: Mr. Subhiksh Vasudev, Advocate.

versus

THE GENERAL MANAGER, NORTHERN

RAILWAY

..... Respondent

Through: Mr. Jagjit Singh, Senior Standing
counsel with Mr. Preet Singh, Mr. Sukhdev Singh
And Ms. Kiran Kaushik, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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16.12.2016

1. The Court has perused the amended petition. The background to the present petition is that the Petitioner, a Joint Venture , was on 13th October, 2011 awarded a contract for execution of the civil work of 'Widening of RUB consisting RCC Box No. 1 of size 9.50m x 4.75m (internal dimensions) and Box No. 2 & 3 of size 9.00 X 5.75m (internal dimensions) each & Box No. 4 of size 7.50m x 4.75m (internal dimension) by Box Pushing Technique near Delhi Kishanganj Station'.

2. In terms of the arbitration clause under Clause 64(3)(a)(ii) of the General Conditions of the Contract ('GCC'), when a demand is made for reference of disputes to the arbitration, the Respondent is required to send to the

Petitioner a panel of "more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received". The Petitioner has to then choose two names out of which one would be appointed as the Petitioner's nominee on the Arbitral Tribunal (AT).

3. As far as the present case is concerned, the Petitioner served on the Respondent on 27th May, 2016 a copy of the letter dated 26th May, 2016 setting out its various claims and suggesting that the disputes be referred to an independent Arbitrator. The name of the former Judge of the High Court was also suggested. There was no reply as such to the said letter.

4. In the meanwhile, the Petitioner filed OMP (I) (Comm) No. 279 of 2016 in this Court. In the said petition on 25th July, 2016, the following order was passed.

“In terms of the order dated 1st July, 2016, the petitioner was given liberty to approach the Deputy Chief Engineer (Construction) within one week for the reconciliation of the account. When the suggestion was made, the same was accepted by the petitioner. Learned counsel for the respondent submits that as a matter of fact, the representative of the petitioner came once and 22rd July, 2016 was fixed for the purpose of reconciliation of the accounts. However, nobody turned up thereafter.

Learned counsel for the respondent has filed the statement of the outstanding amount against Mobilization Advance and Contractors dues with the Railways. According to the said chart, the amount of Rs.1,30,81,192 is payable to the petitioner.

He further submits that in case of any other claim of the petitioner, the respondent has no objection if the Petitioner will go for arbitration. Learned counsel for the Petitioner submits that the proposal given by the respondent at this stage is reasonable and his client will visit the office of the respondent on 28th July, 2016 at 3.30 pm. The chart given by the learned counsel for the respondent is taken on the record.

List on 29th August, 2016”.

5. Thereafter, on 29th August, 2016, the following order was passed.

“Learned Counsel for the petitioner has shown the copy of the letter dated 26th August, 2016 which indicates that the respondent has deposited an amount of Rs.1,30,79,825/- in the miscellaneous head of the Railway. The petitioner was insisting to recover the payment under protest. It is clear from the last order that the respondent had agreed to pay a sum of Rs.1,30,81,192/- to the petitioner. Mr. Jagjit Singh, learned counsel appearing on behalf of the respondent submits that the respondent is agreeable to pay the said amount without prejudice and with regard to the rest of the claim of the petitioner, if tenable, the petitioner is always at liberty to initiate arbitration proceedings. Thus, the petitioner should receive the said payment on the above said condition, for which the respondent has no objection. Counsel for the petitioner, upon instructions, is agreeable. Let the respondent shall pay the said amount to the petitioner through counsel within ten days from today.

The present petition is accordingly disposed of.”

6. As far as the present petition under Section 11(6) of the Act is concerned, the Petitioner was permitted to amend the petition in view of the above developments in OMP (I) (Comm) No. 279 of 2016.

7. The submission of the Petitioner is that in view of the amendment in the

Act with effect from 23rd October, 2015, the question of the Respondent choosing employees of the Railways, either serving or retired, as part of the panel of Arbitrators to constitute the AT, does not arise. He further points out that the claims of the Petitioner have now been reduced as recorded in the order dated 29th August, 2016.

8. Mr. Jagjit Singh, learned counsel for the Respondent referred to the correspondence exchanged between the parties subsequent to the above order passed in OMP (I) (Comm) No. 279 of 2016. In particular, he points out that a panel of four names of serving Railways officers had in fact been sent to the Petitioner. Therefore, it cannot be said that the Respondent has failed to act on the Petitioner's request for constitution of the AT.

9. The above submission overlooks the change brought about by the amendment to the Act which came into effect on 23rd October, 2015. In terms of the amended Section 12 (1) (a) of the Act, read with Schedules V and VII thereto, the question of employees of the Railways functioning as arbitrators in the disputes involving the Railways does not arise.

10. In terms of the arbitration clause in the present case, a three-member AT is envisaged. The Petitioner has already nominated an Arbitrator by its letter dated 26th May, 2016 to the Respondent. Learned counsel for the Respondent now states that the Railways will within two weeks nominate an independent Arbitrator, to whom none of the disqualifications spelt out in the Act as amended with effect from 23rd October 2015, shall apply. Immediately thereafter, an intimation will be sent to the counsel for the Petitioner indicating the proposed date on which the two Arbitrators i.e., the

nominee of the Petitioner and the Arbitrator nominated by the Respondent can meet to finalise the name of the third Arbitrator. If the entire process is not completed within a period of two months from today, it will be open to the either party to approach the Court for direction.

11. The petition is disposed of in the above terms. Order *dasti*.

S. MURALIDHAR, J

DECEMBER 16, 2016
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