

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

% *Judgment pronounced on: 17th February, 2016*

+ **ARB.P. 478/2015**

M/S CRESENT ELECTRO SECURITY SYSTEMS PVT.LTD
..... Petitioner
Through Mr.Virender Bharat, Adv. with
Mr.Anubhav Dubey, Adv.

versus

M/S BROADCAST ENGINEERING CONSULTANTS INDIA
LTD. Respondent
Through Mr.Rajeev Sharma, Adv. with
Ms.Priyanka Raj &
Ms.Radhalakshmi R., Adv.

+ **O.M.P. 1590/2014**

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..... Petitioner
Through Mr.Virender Bharat, Adv. with
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Ms.Radhalakshmi R., Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner in December, 2014 filed the petition being O.M.P. 1590/2014 under Section 9 of the Arbitration and Conciliation Act, 1996 for seeking interim relief in the nature of stay on the execution of the project "Integrated Surveillance and Access Control Management System" (SACMS) at Ministry of Defence, Ministry of External Affairs at South Block, New Delhi and Sena Bhawan, New Delhi and also to appoint the receiver to take possession of the intellectual property of the petitioner. The petitioner has also filed another petition being Arb.P. 478/2015 under Section 11 of the Act in August, 2015 for appointment of Arbitrator.

2. Both the petitions were listed before this Court when the submissions were made by the respective learned counsels of the parties. Both are being decided together by passing a common order.

Case of the petitioners as per the petitions

3. The facts of the case are that the petitioner is a private limited company registered under the Company Act, 1956 who claims itself to be in the consulting, designing, supplying, installing, testing, and maintenance of different types of small, medium and big sizes of the Electronic Security Solutions.

3.1. The respondent is also engaged in the consultancy services and turnkey solution in the field of broadcast communication. Both parties mutually agreed to do the SACMS of the Ministry of Defence

Govt. of India, for which the respondent and the petitioner entered into an Agency Agreement dated 25th January, 2012.

3.2. The petitioner provided the solution designed for the project based on the qualitative requirements, scope of works and functional requirement as per the Request For Proposal (RFP) published by the Ministry of Defence for the said project. As per the RFP provided by the petitioner to the respondent, para No.5(b) of RFP thereof reads as under:-

“5(6). Duly filled in Request for Proposal (RFP) received shall be evaluated on the basis of a criteria area based on the Qualitative Requirements, Scope of the works and functional requirements and only those qualifying the same shall be considered for the next stage of the bidding process.”

Para 1(6) of chapter 5 of the RFP containing evaluation criteria mandatory is as under :

“The technical Bids forwarded by the bidders will be evaluated by the Buyer with the reference to the integrated security solution proposed in response to qualitative requirements, scope of the works and the functional requirements as spelt out in chapter- 2 of the Bid documents and technical characteristics of the equipment as mentioned in part-B to the chapter-2 of RFP.”

3.3. In accordance with the Agency Agreement, petitioner provided the solution for the project which was solely vested with him and the respondent's tender was declared technically qualified on the basis of the solution provided by the petitioner. It is also pertinent to mention here that without the technical qualification, the respondent could not be able to obtain the tender. It is also mentioned that after the breach

of the contract, the respondent did not return the Intellectual Property Right (IPR) of the petitioner and is still working on the basis of said IPR.

3.4. The aforesaid intellectual property was created by the petitioner in the year 2010 after doing ground work for the said project since 2007 when the permission for conducting the survey and preparation of the probable security solution of the place where such project might be executed in the Ministry of Defence, was given to the petitioner.

3.5. The petitioner and respondent also executed a pre-tender Teaming-up Agreement (MOU) on 15th December, 2011 wherein it was also clearly mentioned in para 12 that IPR shall remain with the petitioner. The relevant para 12 reads as under.-

"Although the Lead Bidder will be BECIL and the Supply Order shall be in the name of BECIL, under all circumstances, the Intellectual Property Right (IPR) for the solution for the special project provided by CRESCENT, shall remain, with CRESCENT and BECIL, shall have no right, at any stage of execution or before, or after the execution, to claim for the IPR from CRESCENT"

Hence, the intellectual property mentioned above solely belongs to the petitioner from the very beginning and is still with the petitioner. As per clause 16 of the Agency Agreement dated 25th January, 2012 there is an arbitration clause which provides that in case any dispute and difference arise between the parties, that would be settled by the arbitration proceeding.

3.6. The petitioner prior to filing of the present petition, issued a legal notice dated 30th October, 2014 in respect of IPR and also claimed Rs.40,00,000/- for using the IPR by the respondent without the permission of the petitioner, but the respondent did not reply to the said notice.

3.7. As the respondent has not complied with the terms and conditions of the Agency Agreement and further chose not to respond and/or comply with the notice dated 29th October, 2014, the petitioner is in process of initiating the Arbitration proceedings.

3.8. As per the information of the petitioner, the respondent is using intellectual property of the petitioner while he is engaged in completing his project without the express written permission/ consent of the petitioner. The respondent has thus no right or authority whatsoever to continue to use the intellectual property of the petitioner. It is thus, imperative that the right and interest of the petitioner in respect of the IPR be protected and a receiver be appointed to enable the petitioner to take back the intellectual property entrusted to the respondent. The respondent is in hurry to complete its project, for which the bid was accepted /awarded to the respondent.

4. The prayer made in the petition under Section 9 of the Act is to appoint the representative of the petitioner company or any other person as a receiver with the direction to take custody of the intellectual property of the petitioner from the respondent and to restrain the respondent from continuing the Project "Integrated

Surveillance and Access Control Management System" (SACMS) at Ministry of Defence, Ministry of External Affairs at South Block, New Delhi and Sena Bhawan, New Delhi and the Project Integrated Surveillance and Access Control Management System (SACMS) of Ministry of Defence, by using the intellectual property of the petitioner.

5. In reply it is specifically alleged that the disputes arising from the agreement dated 25th January, 2012 between the petitioner and the respondent were the subject matter of a Suit No. 128/2012 filed by the petitioner as far back as in 2012. The said suit was ultimately disposed of as compromised by order dated 23rd November, 2013. In terms of the compromise the petitioner had also received an amount of Rs.1.20 crores in full and final settlement of its claims. No live claim(s) is now alive. Both petitions are liable to be dismissed. The suit was filed after the respondent had terminated the agreement dated 25th January, 2012 on 1st May, 2012. The dispute now being raised would be barred by the principle of res-judicata. The claim made by the petitioner is false and baseless. It is denied that the petitioner provided any solution to the respondent, as alleged.

6. It is admitted position that during the said Agency Agreement there arose conflict between the petitioner and the respondent. The petitioner filed a suit for permanent and mandatory injunctions vide suit being CS (OS) No. 128/2012, which was dismissed as withdrawn after the settlement arrived at between the respondent and the petitioner.

7. Having heard the learned counsel for both the parties, I am not inclined to grant any relief sought by the petitioner on the following reasons:

- a) Admittedly the Government of India had floated a tender for an Integrated Surveillance and Access Control Management System for the buildings of the Ministry of Defence.
- b) The tender floated by the Government of India contained detailed technical specifications and the bidders had to indicate how they would set up the surveillance system compatible with the technical specifications. Based on the technical specifications a bid was submitted by the respondent.
- c) Subsequently, inter-se disputes developed between the top management of the petitioner, and its CMD Mr. Gautam Kar, by letter dated 25th February, 2012 asked the respondent to terminate the contract. In the said letter, it was stated by the petitioner that the project was no longer tenable on its part, due to constraint arising from financial infeasibility and technical non-compliance with system integration.
- d) The said letter, which is signed by the same person who has signed the petition under reply, sought termination of the agreement with immediate effect without any liabilities or bindings on either party.
- e) It is understood that there shall be no other claim by petitioner or respondent with regard to any provision of the agreement.

- f) A communication dated 28th March, 2012 was received from the petitioner wherein it was stated that the letter dated 25th February, 2012 be treated as cancelled and that the person who had signed the letter namely, Mr. Goutam Kar, was "either mentally unstable or disturbed or he was intentionally behaving with such important matter with a view to spoil the above project". It was also stated that in view of the "observed insane, illogical and unusual behaviour suspected dubious role and mentally disturbed condition of..." another person had been appointed as Managing Director in his place.
- g) The subsequent correspondence exchanged between the parties and meetings, disclosed that there were deep internal conflicts in the Management of the petitioner. It was alleged by the respondents that the petitioner did not have the financial and technical capability to perform its functions under the agreement.
- h) Accordingly, a show cause notice dated 10th April, 2012 was issued by the respondent to the petitioner. By a letter dated 1st May, 2012 the Agency Agreement was terminated with immediate effect by the respondent.
- i) The said termination was challenged by the petitioner by way of Suit No.123/2013 in the District Court, Saket. The petitioner's prayer under Order 39 Rules 1 and 2 CPC for stay was not granted by the Court.

j) The petitioner has already received an amount of Rs.1,20,00,000/- in full and final settlement of all its claims. Even, at the time the suit was filed which was heard from time to time and ultimately disposed of, the petitioner never sought any order restraining the respondent from implementing the project.

8. The petitioner has also filed the petition at this belated stage after having received Rs. 1,20,00,000/- as full and final settlement of all its claims. It is a mala fide and mischievous act on the part of the petitioner. Thus, the petitioner has no case.

9. Mr. Rajeev Sharma, learned counsel for the respondent submitted that the only document in the nature of a solution that was given by the petitioner was a Schematic Diagram comprising of only one page. The said document was provided by the petitioner along with letter dated 26th March, 2012. A copy of the said letter along with its enclosures has been filed along with the reply. The said Schematic Diagram which bore the heading "Solution" was not even forwarded by the respondent to the Ministry of Defence. It is lying with the respondent who is ready to return the same to the petitioner at any time. The technical and commercial bids from respondent were submitted to Ministry of Defence on 31st January, 2013 whereby the said so-called solution was provided vide letter dated 26th March, 2012, which as per the respondent, had no contribution from the petitioner and was submitted by respondent vide letter dated 5th

September, 2013. By the said letter, the respondent had formulated complete layout plans along with inventory details with the project.

By a note dated 9th September, 2013, the Ministry of Defence accepted the layout plans. The same was approved by the Ministry of Defence vide letter dated 13th September, 2013. Since the project relates to the security systems in Ministry of Defence buildings, the said communication from the Ministry of Defence has not been filed along with the reply. The respondent during the course of hearing has given an undertaking that they have no intention to infringe the IPR as claimed by the petitioner at present or in future. The layout plan is entirely different which is not on the basis of the layout plan of the petitioner in any manner. They were ready to produce the same in a sealed cover for the perusal of this Court.

10. The respondent also submits that the SACMS comprises of CCTV Surveillance, Visitors and Personnel Access Control and Vehicular Access Control. The complete solution of the project is combination of individual OEM's solution on a common back bone platform of M/s Bosch. Considering the functional requirement of the RFP, the solution is a generic solution for the given Bill of Material and no specific solution was required to be obtained. The petitioner's responsibility was for procurement of the material on issue of purchase order from respondent and to provide system integration. Further, the Intellectual Property (IP) rights are recognised exclusive rights to creations of the mind and the generic solution submitted in response to the RFP was not a copyright/trademark or patent solution

of the petitioner. Therefore, even otherwise the case of IPR does not arise in this case.

The layout of the Surveillance and Access Control equipment specified in the RFP and the contract were finalised only after the award of the contract, and the actual and final design has been made after a lot of iterations at the user end. Therefore, there was no intellectual property of the petitioner involved, as claimed.

11. Considering the overall facts and circumstances and entire gamut of the dispute, I find that there is force in the submission of the respondent. Even otherwise, if any labour and skill of the petitioner is involved, who had claimed no right whatsoever as per the compromise deed dated 26th October, 2013 in which it had recorded that petitioner was not left with any claim of any nature whatsoever against the respondent, in that view of the matter, the petitioner is estopped from claiming the relief now sought for in the petition. There is no live dispute surviving anymore which is to be decided by the Arbitral Tribunal. Both the petitions lack any merit.

12. Under these circumstances, once the compromise is arrived at between the parties, no live claim(s) are survived. Both the petitions are accordingly dismissed. However, the petitioner is granted liberty to recover the layout plan from the respondent within four weeks from today, if so desired, as the respondent itself has offered to return back the same and not to infringe the layout plan of the petitioner in any manner in future.

13. Both the petitions are disposed of.

14. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 17, 2016