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

+ **ARB.P. 633/2016**

PRADEEEP VINOD CONSTRUCTION CO. Petitioner

Through: Mr S.W. Haider, Advocate.

versus

UNION OF INDIA Respondent

Through: Mr Jagjit Singh, Senior Standing
Counsel with Mr Preet Singh, Mr
Sukhdev Singh and Ms Kiran,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 21.12.2016

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen in respect of a contract dated 02.01.2012 (hereafter 'the Contract'). In terms of the Contract, works for repair of the damaged platform surface at ROK and extension of mineral siding at Nangloi in the section of ADEN/ROK, was contracted by the respondent to the petitioner.

2. It is not disputed that the General Conditions of Contract (GCC), Northern Railway are applicable to the Contract in question and the said terms therein includes an arbitration clause, the relevant extracts of the same is set out below:-

"64 (1) (i) **Demand for Arbitration** - In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective

rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway falls to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' referred to in clause-63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

64(1)(ii)(a)---The demand for Arbitration shall specify the matters which are in question or subject of the dispute or differences as also the amount of claim termwise. Only such dispute(s) or difference(s) in respect of which the demand has been made together with counter claims or set off shall be referred to arbitration and other matters shall not be included in the reference.

64(1)(ii)(a)— the Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

(b) The claimant shall submit his claim stating the facts supporting the claim alongwith all relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claim from Tribunal thereafter unless otherwise extension has been granted by Tribunal.

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64(3)(a)(i) —In case where the total value of all claims in question added together does not exceed Rs,10,00,000/-

(Rupees Ten Lacs only), the Arbitral Tribunal consist of a sole arbitrator who shall be either the General Manager or a gazetted officer of Railway not below the grade of JA grade nominated by the General Manger in that behalf. The sole arbitrator shall be appointed within 60 days from the days when a written and valid demand for arbitration is received by Railway.

64(3)(a)(ii) —In cases not covered by Clause 64(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Rly. Officers not below JA grade, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazette Rly. Officers of one or more departments, of the Rly. To the contractor who will be asked to suggest to General Manager upto 2 names out of panel for appointment as contractor's nominee. The General Manger shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the presiding arbitrator from amongst the 3 arbitrators so appointed. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts department. An officer of Selection Grade of the Accounts department shall be considered of equal status to the officers in SA grade of other departments of the Railways for the purpose of appointment of arbitrators.”

3. In view of the disputes that have arisen between the parties, the petitioner invoked the arbitration clause by a letter dated 12.01.2016 listing out its claim and calling upon the respondent to appoint an arbitrator in terms of clause 64 of the GCC. The respondent responded by a letter dated 20.07.2016, whereby the petitioner's request was declined on the ground that the petitioner had submitted a No Claim Certificate.

4. It is the petitioner's case that its bills had not been cleared and the

respondent had refused to release the final bill unless the petitioner submitted a No Claim Certificate. According to the petitioner, the said No Claim Certificate was issued under duress and economic coercion and, therefore, was invalid.

5. Notice of the said petition was accepted by the learned counsel for the respondent on 18.10.2016 and time was sought to take instructions/file a reply. However, no reply has been filed by the respondent.

6. Mr Singh, learned counsel appearing for the respondent does not dispute the existence of an arbitration clause. He, however, submits that in view of the No Claim Certificate, the claims made by the petitioner do not survive.

7. At this stage, it is not necessary to examine the rival contentions. The averments that No Claim Certificate was issued by the petitioner under duress and economic coercion is also not traversed as the respondent has not filed its reply.

8. In **National Insurance Company Limited v. Boghara Polyfab Private Limited** (2009) 1 SCC 267, the Supreme Court had - after referring to its earlier decision in **S.B.P. & Co.v. Patel Engineering. Ltd.and Anr.** : (2005) 8 SCC 618 - identified and segregated issues that come up for consideration in petitions under section 11 of the Act, into three categories. The issues which the court may decide included the question "*Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection*". Thus the question whether the claims of the petitioner were settled by the

respondent would require to be decided either by the court or by the Arbitrator. After introduction of Sub-section (6A) in Section 11 of the Act, the scope of examination under Section 11 of the Act is confined to examining the existence of the arbitration agreement.

9. In the circumstances, it is necessary to appoint an arbitrator to adjudicate the disputes between the parties.

10. Accordingly, with the consent of the parties, it is directed that a sole Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 18.01.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

11. The petition is disposed of.

VIBHU BAKHRU, J

DECEMBER 21, 2016
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