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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 1302 OF 2016
WITH
ARBITRATION APPLICATION (L) NO. 1303 OF 2016

Shree Sai Transport Co ...Petitioner
Versus
Rashtriya Chemicals & Fertilizers Ltd ...Respondent

Mr Piyush M Shah, *for the Petitioner.*
Mr A Davar, *with Mr Rushabh Mahesh Sheth, Ms Pooja Pramod Batra, i/b MS Bodhanwalla & Co, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 30th January 2017

PC:-

1. I have before me an Arbitration Application under Section 11 and an Arbitration Petition under Section 9 of the Arbitration & Conciliation Act 1996.

2. Both are thoroughly misconceived.

3. The Respondent is the Rashtriya Chemicals & Fertilizers Ltd (**"RCF"**), a Government of India Undertaking. It floated a tender on 3rd November 2014 with a validity period of 15 months from 22nd January 2015 till 21st April 2016 for certain logistics and transportation services. The Petitioner/Applicant submitted a bid on 18th November 2014.

4. Mr Shah for the Petitioner is unable to point out any concluded contract between the Petitioner and the Respondent. There is no purchase order. There is no invoice. There is no document from RCF that awards the contract to the Petitioner and in which one might reasonably expect to find incorporation of the terms and conditions of the tender. This is a point that is squarely taken in the Affidavit in Reply filed by one Mr NH Kurane to the Arbitration Petition. It is true that the tender had an annexure that contains several terms and conditions, one of which was an arbitration clause. But this would operate as a binding arbitration agreement only once the tender was accepted and a purchase order placed or a formal contract executed.

5. The suggestion from Mr Shah postulates a scenario that is simply unthinkable. It means that every tenderer, merely by virtue of putting a bid, has a concluded contract on which he can invoke arbitration. The alternative scenario postulated is that as between this Petitioner and RCF, there was a 'deemed' contract, one that been culled from correspondence. As a general proposition, this is even more alarming. If public sector corporations are to be held to such undocumented contracts based on flights of fancy, every concept of transparency, governance and accountability will have to be abandoned. Indeed, they might as well not exist.

6. In this view of the matter, nothing further is required to order a dismissal of both Petitions. But since Mr Shah presses both petitions, I will deal briefly with his arguments.

7. The case against the Petitioner by RCF is that it is part of a cartel of transporters who, between them, arrange matters such that there is only most marginal difference in the quotations. This results in bid rigging. This is clearly stated in RCF's letter to the Petitioner dated 4th July 2016. This letter is interesting because apart from making out a case in cartelization, RCF invoked the terms and conditions of the tender and asked the Petitioner to show cause why it should not be debarred from tendering. There is then a letter dated 10th November 2016 by which RCF put the Petitioner "on a holiday" for one year. It is actually this that aggrieves the Petitioner, i.e., its prohibition from entering the tendering process — not any dispute in regard to the performance of a concluded or awarded contract.

8. Mr Shah states that the directive from RCF was passed after the period of the contract ended and that on its own this means that there was a concluded contract. It means nothing of the sort; and it is no answer to the question as to whether there was a contract with the Petitioner in the first place. The Petitioner needlessly confuses the non-existence of a contract and its inability to demonstrate that there is a concluded agreement with RCF's imposition of a tendering 'holiday' and its assessment that the Petitioner, along with others, is guilty of acting against the public interest by engaging in cartelization and bid-rigging.

9. Indeed, I would venture to observe that this is not only a question of the Petition and the Application being misconceived, but both are actually mischievous. If the Petitioner is aggrieved by any order of blacklisting or being put on a holiday its remedies surely lye elsewhere. It cannot try and conjure of a contract out of nothing in this fashion seeking only to pressurize RCF into withdrawing its order applying a "holiday period of one year".

10. The Petition and the Application both are dismissed.

11. In the facts and circumstances of the case, there will be an order of costs against the Petitioner in the amount of Rs. 1 lakh. This amount will be paid directly by the Petitioner to the Tata Memorial Hospital, Mumbai within two weeks from today. Compliance to be reported.

(G. S. PATEL, J.)