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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 96/2016

V K SOOD ENGINEERS AND CONTRACTORS Petitioner
Through: Ms. Ansuya Salwan with Mr. Kunal
Kohli and Mr. Abhishek Pundir, Advocates.

versus

GERERAL MANAGER NORTH WESTERN
INDIAN RAILWAYS Respondent
Through: Mr. Jagjit Singh with Mr. Preet Singh,
Mr. Sukhdev Singh and Ms. Kiran Kaushik,
Advocates.

And

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OMP (I) (COMM) 52/2016 & CCP (O) 21/2016

V K SOOD ENGINEERS AND CONTRACTORS Petitioner
Through: Ms. Ansuya Salwan with Mr. Kunal
Kohli and Mr. Abhishek Pundir, Advocates.

versus

GERERAL MANAGER NORTH WESTERN
INDIAN RAILWAYS Respondent
Through: Mr. Jagjit Singh with Mr. Preet Singh,
Mr. Sukhdev Singh and Ms. Kiran Kaushik,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER
01.02.2017

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1. A preliminary objection has been raised by Mr. Jagjit Singh, learned

counsel for the Respondent to the maintainability of the petition, OMP (I) (COMM) 52 of 2016 on the ground of jurisdiction. Mr. Singh draws attention to the Note (iv) of Clause 64 of the GCC which is the arbitration clause and which reads as under:

“40. Arbitration Clause No. 64 of GCC

Note (iv) If there is any dispute arisen between the parties with respect to this agreement, then any application or suit shall be initiated only in the court with the local limits falling under the jurisdiction of the North-Western Railway and both the parties shall be bound by this clause.”

2. While Ms. Ansuya Salwan, learned counsel for the Petitioner does not dispute that the above note (iv) applies the parties, she refers to Section 42 of the Arbitration and Conciliation Act, 1996 (‘Act’) and submits that since on an earlier occasion the Petitioner filed OMP (I) No. 456 of 2015 in this Court seeking interim reliefs, and certain reliefs were granted in the said petition without any objection as to maintainability raised at that stage by the Respondent, the Petitioner can come to this Court again to seek relief.

3. As far as the earlier petition, OMP (I) No. 456 of 2015, is concerned, an interim order initially was passed therein by this Court on 19th August, 2015 granting interim relief as regards forfeiture by the Respondent of the security deposit furnished by the Petitioner. Ultimately, on 1st February, 2016, the said petition was dismissed as withdrawn “with liberty granted to file another petition on the basis of fresh cause of action, if necessary.”

4. It is on the basis of the said liberty that the present petition, OMP (I) (COMM) No. 52 of 2016 has been filed in which the Court on the first date

of hearing on 22nd February, 2016 passed an *ex parte* order appointing a Local Commissioner ('LC') to visit the site in question and *inter alia* prepare inventory of the materials lying at the site. The said LC has since given his report in which *inter alia* he has stated that he was prevented from carrying out the work to the full extent. The Petitioner has filed a contempt petition being CCP (O) No. 21 of 2016 in this regard. A reply has been filed by the Respondent to the contempt petition disputing the contentions of the LC.

5. It is pointed out by Mr. Jagjit Singh, learned counsel for the Respondents, that in the earlier round of litigation i.e., OMP (I) No. 456 of 2015, no reply had been filed by the Respondent. The petition ultimately stood withdrawn by the Petitioner without there being any determination on the question of jurisdiction. He submits that inasmuch as the clause in question contemplates exclusive jurisdiction of the Courts at Rajasthan where the Respondent has its headquarters, the question of entertaining OMP (I) (COMM) No. 52 of 2016 under Section 42 of the Act does not arise. He further points out that another petition filed in this Court by the Petitioner, seeking reference to arbitration of the disputes arising out of another contract entered into between the same parties was withdrawn by the Petitioner.

6. Faced with the above situation, Ms. Salwan learned counsel for the Petitioner volunteered that in the present case as well, the Petitioner is prepared to approach the High Court of Rajasthan with the petition under Section 11 of the Act seeking the appointment of an Arbitrator. However,

her concern is that the report of the LC should be taken into consideration in the arbitration proceedings.

7. The Court clarifies that as far as report of the LC is concerned, it will be open to both the parties to rely on their respective contentions in that regard before the learned Arbitrator. It will also be open to the parties to rely on their respective pleadings both in OMP (I) (COMM) 52 of 2016 as well as in the contempt petition CCP (O) No. 21 of 2016. The Arbitrator will consider the said pleadings and submissions and come to a conclusion as to the said report of the LC. The Court does not express any opinion on one way or the other in that regard.

8. It will now be open to the Petitioner to seek appropriate remedies as regards the appointment of an Arbitrator by filing a petition under Section 11 of the Act in the High Court of Rajasthan.

9. The petitions and the contempt petition are disposed of in the above terms. Order be given *dasti*.

S.MURALIDHAR, J

FEBRUARY 01, 2017

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