

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 9th February, 2018

+

O.M.P. (T)(COMM) 87/2017

ANIL MEHTA

..... Petitioner

Through: Mr.Avinash Trivedi, Adv.

versus

GENERAL MANAGER, NORTHERN RAILWAY Respondent

Through: Mr.Himanshu Upadhyay, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) has been filed by the petitioner seeking termination of the mandate of Arbitral Tribunal constituted on 19.09.2014 and to appoint a substitute Arbitral Tribunal to adjudicate the disputes that have arisen between the parties in relation to the work of “Misc work between Samrala to Sanehwal stations in connection with Chandigarh Ludhiana new B.G. Rail Link Project” awarded by the respondent in favour of the petitioner vide Acceptance Letter dated 29-08-2011 and a formal contract agreement No.84W/Dy.CE/Const-II/CDG dated 11-11-2011.

2. The counsel for the petitioner submits that disputes have arisen between the parties in relation to the above work, on the request of the

petitioner, the respondent appointed Arbitral Tribunal on 19.09.2014 in accordance with Clause 64 of the General Condition of Contract between the parties. He submits that though more than 3 years have passed, the arbitration proceedings are still at the stage of pleadings. He further submits that in this entire period of more than three years, there has not been a single sitting of the Arbitral Tribunal where all three members of the Arbitral Tribunal have been present. He further draws my reference to the letter dated 24.06.2016 addressed by the respondent to the Arbitral Tribunal for expediting the adjudication of the disputes. He submits that in spite of this request, only one sitting of the Arbitral Tribunal took place on 06.02.2017, where again it was only the Presiding Arbitrator who was present and the other two arbitrators had remained absent. He submits that thereafter, there has been no further sitting of the Arbitral Tribunal.

3. Learned counsel for the respondent does not dispute the above facts. He however, submits that the respondent has taken note of the concerned of the petitioner and it would ensure that a fresh Arbitral Tribunal is constituted within a period of two days from today.

4. Notice on this petition was issued to the respondent on 03.11.2017. Three months have passed since that date and admittedly respondents have not yet acted on the plight of the petitioner.

5. Supreme Court in ***Union of India vs. Singh Builders Syndicate*** (2009) 4 SCC 523, in almost similar circumstances, had upheld the order of the High Court appointing a Sole Arbitrator instead of three member Arbitral Tribunal comprising of the serving officers of the respondents in accordance with Clause 64 of the General Condition of

Contract Act. The Supreme Court had held as under:-

“14) It was further held in Northern Railway case that the Chief Justice or his designate should first ensure that the remedies provided under arbitration agreement are exhausted, but at the same time also ensure that twin requirements of sub-section (8) of Section 11 of the Act are kept in view. This would mean that invariably the Court should first appoint the arbitrators in the manner provided for in the arbitration agreement. But where the independence and impartiality of the arbitrator(s) appointed/nominated in terms of the arbitration agreement is in doubt, or where the Arbitral Tribunal appointed in the manner provided in the arbitration agreement has not functioned and it becomes necessary to make fresh appointment, the Chief Justice or his designate is not powerless to make appropriate alternative arrangements to give effect to the provision for arbitration.

15) The object of the alternative dispute resolution process of arbitration is to have expeditious and effective disposal of the disputes through a private forum of the parties choice. If the Arbitral Tribunal consists of serving officers of one of the parties to the dispute, as members in terms of the arbitration agreement, and such tribunal is made non-functional on account of the action or inaction or delay of such party, either by frequent transfers of such members of the Arbitral Tribunal or by failing to take steps expeditiously to replace the arbitrators in terms of the arbitration agreement, the Chief Justice or his designate, required to exercise power under Section 11 of the Act, can step in and pass appropriate orders.”

6. The Supreme Court in the said judgment had also observed that effort should be made by the respondent to ensure that officers, who are likely to remain in a particular place are alone appointed as Arbitrators and that the Arbitral Tribunal consisting of service

officers, decides the matter expeditiously. The Supreme Court had directed that the constitution of Arbitral Tribunal with serving officers from different faraway places should be avoided.

7. As noted by the Supreme Court in the above judgment, the object of the alternate dispute resolution process of Arbitration is to have expeditious and effective disposal of the disputes. Arbitration cannot be allowed to be dragged in the manner as has been done in the present case. As noted above for more than three years, the parties are still at the stage of completion of pleadings. In spite of repeated requests of the petitioner, the respondent could only make a request to the Arbitral Tribunal to expedite the proceedings but thereafter took no effective steps to ensure compliance with the said request. Today again an assurance has been given to the court that a fresh Arbitral Tribunal will be constituted by the respondent, however, there is no guarantee that this Arbitral Tribunal would act with expedition.

7. In view of the above, I see no impediment in terminating the mandate of Arbitral Tribunal so constituted by the respondent vide its notice dated 19.09.2014 and appointing a substitute sole Arbitrator in its place.

8. I appoint **Mr.Sanjivan Kumar Sarvaria**, Retired District & Sessions Judge, 5, Court Road, Delhi-110054, Mobile-9910384642, E-mail: sksarvaria@gmail.com as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the above work.

9. The Arbitration will continue from the stage where it was before the earlier Arbitral Tribunal. The respondent would ensure that

the arbitral record is obtained from the earlier Arbitral Tribunal and place it before the sole Arbitrator now being appointed by this Court.

10. The Arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC). The arbitration and the fee shall be governed by the DIAC rules.

11. The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 09, 2018
cd